

1 9th and, that's a Saturday night, --

2 A Um-hum (affirmative).

3 Q Okay. Look at the calendar, check me out and make sure
4 I'm right now. Saturday, on the 9th, and there's the 10th?

5 A Okay.

6 Q Are you with me?

7 A Um-hum (affirmative).

8 Q Okay. Now, on that night you were at Tina Washington's
9 house; were you not?

10 A Yes.

11 Q And you were hanging out with Corey Clark; weren't you?
12 Your friend?

13 A That day; yeah.

14 Q That night too?

15 A Yeah.

16 Q Saturday night?

17 A Yeah.

18 Q Sunday morning about 1:00 o'clock you were with Corey
19 Clark; weren't you, out in front of Tina's house, apartment?

20 A No.

21 Q Where were you?

22 A Huh?

23 Q Where were you?

24 A I was in Cherokee.

25 Q I'm talking, I'm talking about in the Cherokee

1 apartments.

2 A Yeah.

3 Q Okay. Let me back up.

4 A Okay.

5 Q Saturday night, April the 9th, you were in Cherokee
6 Apartments?

7 A True.

8 Q And in Cherokee Apartments you were in Tina
9 Washington's apartment; right? 119-B?

10 A I guess that's the number. I don't know the number.

11 Q I think I'm right. That may be wrong, but I think
12 that's right.

13 A It might be. I don't know.

14 Q Okay. And you were there with Corey Clark; weren't
15 you?

16 A Yeah.

17 Q And ya'll were drinking beer; weren't you?

18 A Yeah.

19 Q And during the night, sometime around 12:00 or 1:00
20 o'clock, ya'll went out and got some beer; didn't you?

21 A Huh, why you saying ya'll?

22 Q Did you not go out and get some beer?

23 A No.

24 Q Did anybody in your presence leave and then come back
25 with beer before 1:00 o'clock?

1 A I ain't -- that day -- that night there I ain't seen
2 Corey. I ain't seen Corey. I left Corey about what, 8:00, 9:00,
3 8:00 o'clock that night. So how you saying we was hanging out
4 and all this and went out and got some more beer?

5 Q Do you recall earlier I asked you a question, in your
6 interview with Det. Weaver? I asked you whether or not you
7 denied knowing that Corey Clark was there that, with you that
8 night and knowing that Corey Clark --

9 A With me where?

10 Q Remember I asked you a question, had you denied that
11 Corey Clark was the third dude that had gone to Junior Foods?

12 A How many dudes went to the Junior Food?

13 Q Well, did you deny that Corey -- Let me just you ask
14 this. Let me ask you to look at page five while the court
15 reporter is changing tapes. Look at page five.

16 A Whereabouts?

17 Q Number 5. Look right in the middle of the page,
18 beginning with where it says "Weaver". Right here, Mr. Young.
19 Right there.

20 A All right.

21 Q Have you got it?

22 A Right here.

23 Q Let me show you.

24 A Okay.

25 Q Okay. Let's go back up and start right there. Do you

1 see where I'm pointing? Do you see where Det. Weaver asked you,
2 "Okay. Who else was there when he told you about it?"

3 A About what?

4 Q Well, Mr. Mitchell asked you whether or not Mr.
5 Cromartie had told you about doing something at the Junior Food.

6 A Let me see, now, what are we on? Weaver or Johnson?

7 Q You're Young. See, Weaver is where I'm pointing your
8 direction to at this time.

9 A Okay.

10 Q Okay. Who else was there when he told you about it?
11 Do you remember him asking you that question? Do you remember
12 him asking you that question on April the 13th, 1994, Monday,
13 about 2:14 P. M.?

14 A I'm on the wrong page.

15 Q You're on page five. Go back --

16 A I'm on Johnson.

17 Q Go back. Count five back.

18 A Two, three, four, five. Okay. Four, five. Okay.

19 Q Okay. Det. Weaver?

20 A Yeah. I see it right there.

21 Q Now, Det. Weaver asked you, "Okay. Who else was there
22 when he told you about it"? You said, "Nobody. He just came in
23 to me and then he said he wanted to go hit the Junior Food Store,
24 so he went out there, all the way out there, went out there
25 towards Tallahassee". Do you recall making that statement? You

1 said nobody else was there?

2 A Where I was? Well, whereabouts. Whereabouts was it?

3 Q Well, that's my question.

4 A Well, I'm trying --

5 Q You were asleep. If you weren't there around 1:00
6 o'clock, if you weren't there around then, how do you know what
7 anybody said to you?

8 A Where I was?

9 Q How do you know that Jeff Cromartie said anything to
10 you if you weren't there?

11 A Where I was? What you mean? What you talking about?

12 Q Look at the next question. It says, "Okay. About what
13 time was it?" You said, "I was asleep when they came back".
14 Then he asked you, then Lt. Melvin Johnson asked you, "When you
15 say, they, who, who?" And you said, "Him and another dude".

16 A Him and other dude?

17 Q And another dude.

18 A Yeah.

19 Q Then Lt. Johnson said, "Who was the other dude?" And
20 you said, "He said he had another dude with him".

21 A Yeah.

22 Q Then Johnson, Lt. Melvin Johnson said, "Who was the
23 dude?"

24 A Um-hum (affirmative).

25 Q And you told him, "I don't know the other dude." That

1 was a lie; wasn't it?

2 A How many it was?

3 Q Mr. Young, the other dude was you; wasn't it?

4 A Me?

5 Q Yes, sir.

6 A No; it wasn't.

7 MR. MEARS: One moment, Your Honor.

8 Q I thought I was through, Mr. Young, but I wasn't. Just
9 a couple of more questions.

10 A All right. Go ahead.

11 Q I asked you about your relationship with Mr. Corey
12 Clark and you said he was your friend, good friend, real good
13 friend.

14 A We're friends.

15 Q Do ya'll wear the same colors?

16 A What you mean, what you mean by colors?

17 Q Okay.

18 A What you mean by colors?

19 Q Okay. What about Carnell Cooksey?

20 A What about him?

21 Q He's your friend too?

22 A True.

23 Q Close friend?

24 A True friends.

25 Q True friends?

1 A True friends.

2 Q He was out there at Cherokee Apartments on the night
3 the shooting took place; wasn't he?

4 A Talking about Cherokee? Yes.

5 Q He's the one that you tried to give the gun to after
6 you ran out of bullets; didn't you?

7 A Yeah.

8 Q So, Corey Clark is your good friend?

9 A (Laughs)

10 Q Thad Lucas is your good friend?

11 A Um-hum (affirmative).

12 Q Carnell Cooksey is your good friend?

13 A We're friends, yeah.

14 Q Tina Washington is Corey Clark's sister-in-law? She's
15 got children by his brother; right?

16 A Yeah.

17 Q You know that?

18 A Yeah.

19 Q And you didn't remember that he was the one there in
20 Tina's apartment that night when they first asked you about this
21 case; did you?

22 A Who is?

23 Q Corey. You told them you didn't know who that dude
24 was?

25 A You say -- back up again.

1 Q When Lt. Melvin Johnson said, "Who. Who?" Remember he
2 said, "Who. Who?"

3 A Um-hum (affirmative).

4 Q And you said, "I don't know"?

5 A All right. Go ahead.

6 Q You were lying to him; weren't you?

7 A About what?

8 Q About who the other dude was.

9 A Other dude? What you mean?

10 Q The other dude that had gone to Junior Food?

11 A So, who the other dude was?

12 Q Corey Clark; wasn't it?

13 A I don't know.

14 Q Your gun and your friends --

15 A Okay. What that supposed to mean --

16 Q -- and you denied it was your gun, you denied it was
17 your friends and you denied knowing anything about it; didn't
18 you?

19 A That was my gun.

20 Q Yes, sir; we know that. Thank you.

21 MR. MITCHELL: Judge, we -- Well, I was going to --
22 Never mind. I apologize to the Court.

23 THE COURT: Anything else?

24 MR. MEARS: Nothing, subject to recross, Your Honor.

25 THE COURT: Anything further from the State?

1 MR. MITCHELL: No, sir.

2 THE COURT: Gentlemen, does this witness need to be
3 excused, or is he to remain?

4 MR. MITCHELL: Judge, we'd like to have him remain,
5 please.

6 THE COURT: Mr. Young, if you'll step down, please,
7 sir. You need to remain in the witness room.

8 MR. HARDY: Chris Mullins.

9 THE COURT: Would you raise your right hand, please?

10 Do you solemnly swear or affirm that the evidence you
11 shall give to the Court and this jury in the matter now
12 pending before this Court shall be the truth, the whole
13 truth and nothing but the truth, so help you God?

14 MR. MULLINS: I do.

15 CHRIS MULLINS

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HARDY:

19 Q State your name for us, please, sir?

20 A Chris Mullins.

21 Q And back on April the 7th, 8th, 9th, 10th, 11th, where
22 were you working then, please, sir?

23 A I was working for the Thomasville Police Department.

24 Q And where do you live now?

25 A I live in New Jersey.

1 Q And what do you do up in New Jersey?

2 A I work for UPS in Staten Island, New York.

3 Q Is that where you're from?

4 A Yes, sir.

5 Q And how long were you a policeman here in Thomasville?

6 A About six years and ten months.

7 Q And what rank did you have when you left?

8 A I was a patrol sergeant.

9 Q Now, back on April the 10th of '94, were you working
10 that particular day?

11 A Yes; I was.

12 Q And what shift were you working then, Chris?

13 A I was working the night shift.

14 Q And do you know David Allen?

15 A Yes. He was one of the patrol officers --

16 Q Ellis Jackson? Ellis Jackson?

17 A He was my lieutenant.

18 Q All right. On that particular night, did you get a
19 call that night, late, after midnight?

20 A Yes, sir.

21 Q About what time was it, Chris?

22 A I didn't write down the exact time. It was late in the
23 evening.

24 Q And where was the call to?

25 A It was to the Junior Food on W. Jackson Street.

1 Q And did you go there?

2 A Yes; I did.

3 Q And who was there?

4 A When I got there David Allen was the officer first on
5 the scene.

6 Q And what did you do when you got there?

7 A When I got there David informed me they wasn't able to
8 see the clerk, and so we have a procedure that we do for --

9 Q And what's that procedure?

10 A -- safety reasons. Well, you don't enter a building if
11 you can't see the clerk. Usually we have them step outside and
12 just make sure everything's okay. So with David not being able
13 to see the clerk he waited for me to get there and then we went
14 inside and cleared the store and made sure that nobody was
15 inside.

16 Q Who did that?

17 A David Allen and myself.

18 Q Did you go inside?

19 A Excuse me?

20 Q Did you go inside?

21 A Yes, sir.

22 Q Did you see anything when you got inside?

23 A Didn't see any, any suspects. I went and, I went
24 around to the counter and I could see what appeared to be the
25 store clerk lying on his back in a pool of blood.

1 Q Anybody else in the store at that time?

2 A No, sir.

3 Q While they're looking at the other pictures, let me
4 show you this one photograph, Number 53. Can you identify that
5 for me, please, sir?

6 A Yes, sir. That's the gentleman I saw when I first
7 entered the store, behind the counter.

8 Q Is that a fair and accurate representation of what you
9 saw, Chris?

10 A Yes, sir.

11 Q Was he dead?

12 A I went back outside and put some gloves on because he
13 appeared to be dead just by a visual. I didn't want to
14 contaminate anything. I put some gloves on and went back inside
15 and took a pulse, or attempted to and he didn't have any pulse or
16 any type of respiration.

17 Q Let me show you these other photographs, 106 and 107.

18 MR. MEARS: Your Honor, could I ask that the
19 photographs -- I know it's inadvertent -- that they not be
20 displayed. Some of the jurors are quite close and until
21 they're admitted into evidence I'd ask that they not be
22 shown to the jury.

23 A I'm sorry. I didn't, I didn't realize --

24 BY MR. HARDY:

25 Q 51, 54, 55, 56, and 57, if you'd look at these for me,

1 please, sir, in addition to those?

2 Have you had a chance to look at them?

3 A Yes, sir.

4 Q Can you identify each of those photographs?

5 A That was the scene when I arrived. It's exactly the
6 same.

7 Q What do they depict?

8 A The clerk that appeared to be shot in the head.

9 Q Did you notice a wound?

10 A I didn't initially until I came back and got close
11 enough to see he was shot in the face.

12 Q Is that a fair -- Are those photographs that you just
13 denominated the numbers, fair and accurate representations of
14 what you saw?

15 A Yes, sir.

16 MR. HARDY: Your Honor, we'd offer each of these into
17 evidence.

18 MR. MEARS: Your Honor, the objection would be to they
19 are duplicative. They all show the same scene. It is a
20 duplicate. And we'd object on that basis. Also we would
21 object on the basis that the probative value of the
22 photographs are outweighed by the inflammatory nature based
23 upon the fact that there's no evidence that's in dispute
24 that can be shown by those photographs. And we'd object on
25 those two bases.

1 THE COURT: Mr. Hardy, let me see those specific
2 ones, please, sir.

3 Mr. Hardy?

4 They're admitted into evidence over objection.

5 MR. HARDY: Could I publish them to the jury, Your
6 Honor?

7 THE COURT: Yes, sir.

8 (Whereupon Mr. Hardy tenders photographs to the jury)

9 BY MR. HARDY:

10 Q Is that what you saw, Mr. Mullins?

11 A Yes, sir.

12 Q What'd you do after you checked his pulse?

13 A I went back outside and I had Off. Allen set up a
14 perimeter with crime scene tape and gave him some instructions to
15 identify and take a log of anybody entering the scene including
16 EMT's and supervisors, detectives.

17 Q Is that the procedure? To rope off the area?

18 A Yes, sir.

19 Q Was it done?

20 A Yes, sir; it was.

21 Q These photographs number, which we've already, I think
22 have been admitted, Your Honor, 103, 104 and 101, would you look
23 at them for me, please?

24 Does that depict the crime scene roped off as you're saying
25 it?

1 A Yes, sir.

2 Q Is that to keep people out from the area?

3 A Yes, sir. From contaminating the scene.

4 Q Was the detective called?

5 A Yes. I contacted Lt. Jackson, who, of course, was my
6 immediate supervisor. So as soon as I made the exit out of the
7 store I contacted him and informed him about the clerk and had
8 the EMS to be sent. And then I contacted the dispatch to let
9 Det. Weaver know. He was the on call detective. And also Sgt.
10 Williams, the canine sergeant, based on the information that
11 somebody had fled the store. We have a canine that can possibly
12 track people.

13 Q Did Williams arrive?

14 A Yes; he did.

15 Q Weaver?

16 A Yes.

17 Q Collins?

18 A Yes. Ken Collins, G. B. I.

19 Q Were they, Collins and Weaver, allowed to go back in
20 the store after you had exited?

21 A After I came out, basically the scene was turned over
22 to Lt. Weaver.

23 Q So you left, you left --

24 A I got outside and started my notes and gave some of the
25 patrol people some instructions to kind of halve the area and

1 start interviewing anybody on the street basically. It was so
2 late, a lot of times people that are out may have seen somebody
3 running or --

4 Q Was this a busy time of night or a slow time of night?

5 A Slow time of night. We consider it, like, most of the
6 time the people that are out are usually just the cops and the
7 bad guys, at this time of night.

8 Q Did you do anything else in your investigation, Chris?

9 A There was a vehicle that was stopped with two brothers.
10 Their last name was Saft.

11 Q That was just routine procedure?

12 A Routine. Just in the area. We F.I.R.'d and called
13 Det. Wea -- Det. Winkelman to come over and interview those guys.
14 One guy was tall and had some dirt on his shoes, so we just tried
15 to check everybody we possibly could.

16 Q Did they have anything to do with it?

17 A No. As far as I know they were cleared.

18 Q You were just trying -- anybody in the area or
19 anybody --

20 A Anybody. We turned in F.I.R.'s, which is a field
21 interview report of anybody on the street, what they're wearing,
22 where they were, you know, what they may be doing out that time
23 of night so the detectives can later on refer back.

24 Q Is that standard procedure?

25 A Right. They may have seen something.

1 Q Were any other people on the scene talked to?

2 A I didn't. I walked the EMT's in and they confirmed the
3 gentleman was dead and those are the only people I allowed in or
4 out of the scene besides who David noted down, which was Weaver
5 and Maj. Tyler and Ken Collins and --

6 Q The other lay people, there had been F.I.R.'s on them
7 too?

8 A Those -- Excuse me?

9 Q The other people that were at the scene?

10 A No. The F.I.R. is just for people, civilians. We, of
11 course, document all the law enforcement or anybody. But the
12 F.I.R. is just a field report of who's out on the street late at
13 night, maybe hanging around a business or in a parking lot where
14 there's cars.

15 Q Is this business here in Thomas County?

16 A Yes, sir.

17 Q Did you ever go out and see the beers found on the
18 ground?

19 A No; I did not.

20 MR. HARDY: He's with the Court, Your Honor.

21 MR. BRYANT: Your Honor, we have no questions.

22 THE COURT: Gentlemen, may this witness be excused?

23 MR. HARDY: Yes, sir, please.

24 MR. MEARS: Yes, Your Honor.

25 THE COURT: Your are excused.

1 MR. MULLINS: Thank you, Judge.

2 THE COURT: Gentlemen, it's my understanding that we've
3 got some matters to take up at 12:00 o'clock outside the
4 presence of the jury; is that correct?

5 Mr. Hardy, do you have another witness at this time?

6 MR. HARDY: Sam Brown, Your Honor, which should be
7 fairly short.

8 THE COURT: All right, sir. Sam Brown.

9 Gentlemen, while Mr. Brown is taking the stand, let me
10 inquire for purposes of the jury recess during lunch, how
11 long do you anticipate the 12:00 o'clock matter is going to
12 take to address?

13 MR. MEARS: Judge, I would like to say no more than
14 an hour, but I would rather err on the side of having taken
15 too much time. I would say probably an hour and a half. I
16 wouldn't want the jury to come back and then be
17 inconvenienced.

18 THE COURT: Thank you, sir.

19 Would you raise your right hand, please?

20 Do you solemnly swear or affirm that the evidence
21 you shall give the Court and this jury in the matter now
22 pending before the Court shall be the truth, the whole
23 truth and nothing but the truth, so help you God?

24 MR. BROWN: I do.

25 * * * * *

1 SAMUEL A. BROWN

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HARDY:

5 Q State your name for us, please, sir?

6 A Samuel A. Brown.

7 Q Mr. Brown, do you hold a public office in Thomas
8 County?

9 A Yes, sir; I do.

10 Q And what's that?

11 A I'm the Thomas County Coroner.

12 Q How long have you been the Thomas County Coroner?

13 A Since 1981.

14 Q And were you called out on April the 10th to the Junior
15 Food Store in Thomas County?

16 A Yes, sir; I was.

17 Q Did you respond?

18 A Yes, sir.

19 Q And did you see an individual there at that time?

20 A Yes, sir.

21 Q And what did you do as coroner?

22 A What did I do as coroner?

23 Q Yes, sir.

24 A I observed there was a body laying behind a counter.

25 Q Was he dead or alive?

1 A Excuse me. He was dead.

2 Q Did you see any injuries to him that you thought was
3 indicative of death?

4 A Yes, sir; I did.

5 Q What was that?

6 A Gunshot wounds to the head.

7 Q Let me show you the photographs. Look at these
8 photographs if you would, please, sir, 53, 55. Just look at
9 those. Can you identify that?

10 A Yes, sir.

11 Q Is that the man you're talking about?

12 A Yes; it is.

13 Q Did you determine who he was?

14 A We did through his driver's license.

15 Q Who was he?

16 A Richard Slys.

17 Q Is that the deceased, Richard Slys?

18 A Yes, sir.

19 Q And did you turn the body over to someone else?

20 A Yes, sir. It was transported by the Thomas County EMS
21 to Archbold Memorial for pickup and transported to the Atlanta
22 Forensic Science Lab.

23 Q And why were you taking it to the forensic science lab?

24 A For an autopsy.

25 Q 48, 49 and 50, if you could look at these for me,

1 please, sir?

2 Q Okay, sir.

3 Q Can you identify them?

4 A Yes, sir.

5 Q What's 48?

6 A 48 is what appears to be a gunshot wound.

7 Q 49?

8 A It's what appeared to be the gunshot wound.

9 Q Where?

10 A Underneath his right eye.

11 Q 50?

12 A 50's a wound in the, I'd say temple area.

13 Q Are they fair and accurate representations of what you
14 saw that night or that morning, Sam?

15 A Yes, sir.

16 MR. HARDY: I offer them into evidence, Your Honor,
17 48, 49 and 50.

18 MR. MEARS: Objection. Goes to the cumulative nature
19 of the photographs, of the photographs already in evidence
20 the Court has admitted. These add nothing to that. They're
21 duplicative in nature. The photographs, the probative value
22 of the photographs is outweighed by the inflammatory nature.
23 And we would object to their admission.

24 THE COURT: Do you have any response, Mr. Hardy, in
25 regards to the objection based on duplicity?

1 MR. HARDY: These show the nature of the wounds, Your
2 Honor. Shows where the man was shot in the head twice.
3 Show exactly where he was shot. If the Court would like to
4 see them?

5 MR. MEARS: And, Your Honor, if I could just add, put
6 this in first, also there is no issue in question that those
7 photographs go to illustrate with regard to the manner and
8 type of death Mr. Slyszyk suffered.

9 THE COURT: Admitted over objection.

10 MR. HARDY: Can I publish them, Your Honor?

11 THE COURT: Yes, sir.

12 (Whereupon Mr. Hardy tenders photographs to the jury)

13 BY MR. HARDY:

14 Q Is that your job, to pronounce people dead as coroner?

15 A It is.

16 Q Is that what you did that morning?

17 A That morning he was declared dead before I arrived
18 there.

19 Q And you officially made it so?

20 A Yes, sir.

21 MR. HARDY: Thank you.

22 THE COURT: Mr. Bryant? Mr. Mears? Do you have any
23 questions?

24 MR. MEARS: Just one moment.

25 CROSS EXAMINATION

1 BY MR. BRYANT:

2 Q Good afternoon, Mr. Brown.

3 A Good afternoon.

4 Q Am I correct in understanding from you is that you
5 examined the body there on the scene and you pronounced the man
6 dead at the scene?

7 A Yes, sir.

8 Q Other than the two gunshot wounds, did you find any
9 other evidence of anything else having been done to the body?

10 A No, sir; I didn't.

11 Q So that whatever happened presumably in terms of his
12 death was caused by the two gunshot wounds?

13 A That was my opinion; yes, sir.

14 Q And you saw nothing else at all related to anything
15 about his manner of death?

16 A No, sir.

17 MR. BRYANT: Thank you, sir.

18 THE COURT: Gentlemen, may this, may this witness be
19 excused?

20 MR. HARDY: Please, Your Honor.

21 MR. MEARS: Yes, Your Honor.

22 THE COURT: You are excused.

23 Ladies and gentlemen, at this time I'm going to excuse
24 you for the lunch recess based upon the estimate of time for
25 us to address this matter which we need to address outside

1 your presence. I'm going to ask you to return to your jury
2 room no later than 2:00 P. M. and hopefully we can begin the
3 trial of this case promptly at 2:00 P. M.

4 Again, please remember and abide by the cautionary
5 instructions.

6 (Whereupon the jury retires from the courtroom, after
7 which the following transpired)

8 BAILIFF: Your Honor, excuse me. Should they leave
9 their pads in the jury room?

10 THE COURT: I beg your pardon?

11 BAILIFF: The pads, leave their pads in the jury room?

12 THE COURT: Yes, ma'am. And lock the jury room up,
13 please.

14 MR. MEARS: Your Honor, before we go I've got -- I
15 found the conviction on the, on Mr. Young. We were able
16 to secure the probation revocation and the adjudication
17 of guilt based upon a felony conviction. Apparently there
18 were two orders entered at different times, both of which
19 took away his First Offender status. And I'm having those
20 marked and I'll put those in the record.

21 THE COURT: All right.

22 MR. MEARS: And I should have had those to begin with.

23 THE COURT: That's fine. For purposes of the record I
24 disagree with your earlier statement. I think it was the
25 Court's error in admitting what the Court previously

1 admitted insofar as the First Offender conviction as opposed
2 to any, as opposed to being misled by Defense Counsel.

3 Thank you.

4 All right, gentlemen, are we ready to proceed?

5 MR. MEARS: This will be 4 and 5 for the record, Your
6 Honor. I'm sorry. The conviction will be Defendant's
7 Exhibits 4 and 5, as they relate to Mr. Young's conviction.

8 THE COURT: Any objections, gentlemen?

9 MR. MEARS: I showed them to Mr. Mitchell already.

10 MR. HARDY: They're in the proper form, Your Honor. He
11 never did admit Number 2, Your Honor, earlier either.

12 THE COURT: He never tendered it.

13 MR. HARDY: He never tendered Number 2?

14 MR. MEARS: I never tendered that? That was the
15 nol-pros on these two. That's part of this --

16 THE COURT: Mr. Hardy, were you asking a question or
17 just simply making a statement in regards to proper form?

18 MR. HARDY: It was a rhetorical question, did he offer
19 Number 2, Judge?

20 THE COURT: No. I'm talking about 3 and 4 -- 4 and 5.

21 MR. HARDY: Let me see them, Judge. I mean, I think
22 they're all the same. Should be the same documents.

23 MR. MEARS: Well, for some reason there are two orders
24 entered. I guess they wanted to make sure it was really
25 revoked because there two different orders at two different

1 times.

2 THE COURT: Gentlemen, let me see them, please?

3 MR. MEARS: Apparently for the same offense. Looked
4 like they might be trying to give him a second chance.

5 MR. HARDY: Did you offer Number 2, Mr. Mears?

6 MR. MEARS: I will.

7 MR. HARDY: Is Mr. Howard and Mr. Newt here? Are they
8 both here? Make sure they're present.

9 SHERIFF POWELL: Mr. Howard is here.

10 MR. MEARS: It looks like they revoked his First
11 Offender.

12 THE COURT: They're both based on the same allegations
13 as to violation of general and special conditions of
14 probation. They do have different dates on the orders. I
15 do think they address the same previous First Offender
16 probationary order of the Court.

17 Was there any objection?

18 MR. HARDY: No, Your Honor. I think they're in the
19 proper form.

20 THE COURT: Admitted without objection.

21 MR. MEARS: Your Honor, we haven't marked Defendant's
22 Exhibit Number 2. I failed to offer that into evidence.
23 And I would offer that. Defendant's Exhibit 2, which is
24 a motion to enter a nol-pros with regard to Gary Lamar
25 Young in the case of 94-CR-330.

1 THE COURT: And an order thereon?

2 MR. MEARS: There's no -- there's an order at the
3 bottom of it. It's one page. It appears to be an order at
4 the bottom of that, that motion.

5 THE COURT: Any objection?

6 MR. HARDY: That's a nol-pros of charges against Mr.
7 Young, Your Honor.

8 THE COURT: Yes, sir. Any objection?

9 MR. HARDY: It's in the proper form, I believe.

10 THE COURT: I assume that means no objection, Mr.
11 Hardy?

12 MR. HARDY: No, sir.

13 THE COURT: Admitted without objection.

14 MR. MEARS: Mr. Hardy had trouble with no objection.

15 SHERIFF POWELL: May I approach the Bench, Judge?

16 THE COURT: Yes, sir.

17 Gentlemen, are there any -- Do we have all of our
18 witnesses outside? Would it be appropriate to excuse them
19 at this time with the exception of who?

20 MR. HARDY: Mr. Howard is here. Mr. Newt, I think, is
21 somewhere.

22 THE COURT: All right. If you would, excuse the
23 remainder of the witnesses until 2:00 P. M. unless you
24 gentlemen have some specific request for someone to remain
25 for any reason.

1 MR. MEARS: Your Honor, may Dr. Newt remain in the
2 courtroom during Dr. Howard's testimony? I know we have
3 a rule of sequestration, but these are two experts in their
4 field. At the conclusion of Mr. Howard's, excuse me, Dr.
5 Howard's testimony there may or may not be any reason to
6 put up Mr. Newt. And could he simply stay in the
7 courtroom to assist me in formulating my cross examination
8 of Mr. Howard, excuse me, Dr. Howard. If Dr. Howard,
9 depends on how he testifies there may not be any reason
10 for the necessity to put up Mr. Newt. I'm just asking if
11 he could be allowed to stay in the courtroom.

12 THE COURT: Any response, gentlemen?

13 MR. HARDY: If he's going to listen to the testimony
14 and then testify about what he said, I don't think he needs
15 to be in the courtroom.

16 THE COURT: Gentlemen, I'll allow him to remain in the
17 courtroom. I'll certainly take that into consideration in
18 considering any testimony of his. And after Dr. Howard has
19 finished his testimony, then he may remain in the courtroom
20 and listen to Dr. Newt's testimony in case there is any
21 rebuttal by the State.

22 Is that satisfactory?

23 MR. HARDY: Yes, Your Honor.

24 MR. MEARS: Yes, sir.

25 THE COURT: All right. Mr. Hardy, as I stated

1 yesterday, I have reviewed Dr. Howard's, the transcript of
2 Dr. Howard's previous testimony in a hearing several times
3 and I don't know that there's any reason to rehash that
4 particular testimony, unless you need to cover something
5 for purposes of today's testimony.

6 MR. HARDY: Judge, I don't know if we asked him all
7 the correct questions the last time, Your Honor. If we
8 could please call Dr. Jim Howard.

9 Can we stipulate that he is an expert in the field
10 of forensic sciences, Mr. Mears? We won't have to go
11 through all that.

12 MR. MEARS: Yes. Yes, Your Honor. We will stipulate
13 to Dr. Howard's qualifications and expertise in the area of
14 forensic evidence --

15 MR. HARDY: Ballistics, microanalysis. He's a man of
16 many hats, I think.

17 MR. MEARS: We would so stipulate, Your Honor.

18 THE COURT: All right. Expert in what field are ya'll
19 stipulating Dr. Howard to, gentlemen?

20 MR. HARDY: Forensic sciences, ballistics,
21 microanalysis, shoeprints, hair. I think he even does blood
22 work. He does it all, Judge.

23 THE COURT: Well, I don't know that all of that is
24 relevant to this particular hearing or trial. Shoeprint?

25 MR. HARDY: Shoeprint analysis, hair analysis,

1 ballistics, microanalysis, Your Honor. He's --

2 THE COURT: Gentlemen, does this stipulation apply
3 simply to this hearing, or does this also --

4 MR. HARDY: Yes, sir. This, this hearing.

5 THE COURT: -- apply to the trial?

6 MR. MEARS: Certainly. And I stipulate to Dr. Howard's
7 expertise and his experience and credentials, but in no way
8 waiving our objections to the use of shoeprint
9 identification as falling within the parameters of the
10 Harper standard.

11 THE COURT: Yes, sir.

12 Dr. Howard, if you would raise your right hand, please,
13 sir?

14 Do you solemnly swear or affirm that the evidence
15 you will be giving this Court and the jury at this time in
16 the matter pending before the Court shall be the truth, the
17 whole truth and nothing but the truth, so help you God?

18 DR. HOWARD: I do.

19 THE COURT: You may lower your hand.

20 Mr. Hardy?

21 DR. JAMES W. HOWARD

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HARDY:

25 Q And you're Jim Howard with the Georgia Crime Lab in

1 Moultrie, Georgia?

2 A Yes, sir.

3 Q In reference to -- I think we've just been talking
4 about the shoeprints. You compared, I think you were given four
5 pairs of shoes?

6 A Yes, sir.

7 Q And you have some, two plaster casts?

8 A Yes, sir.

9 Q And you had some pictures of some shoeprints?

10 A Yes.

11 Q And you made a comparison using the plaster casts, and
12 I think later on the shoeprints --

13 A The photographs.

14 Q -- pictures and --

15 A Yes.

16 Q -- the four pair of shoes?

17 A Yes.

18 Q Mr. Cromartie's shoes, Mr. Lucas' shoes, Mr. Clark's
19 shoes, and Mr. Young's shoes?

20 A Yes, sir.

21 Q And you have done that by what method, please, sir?

22 A Uh, by method of visual comparison. In this case side
23 by side comparison, which is an accepted method in shoeprint
24 comparisons.

25 Q Any other ways?

1 A Uh, other than visual; no, sir.

2 Q The comparison performed, was it an accurate and
3 reliable means of ascertaining the identity of the shoe and
4 shoeprints?

5 A Uh, it, it is an accurate, or as accurate as we can get
6 with our measuring instruments; yes, sir.

7 Q And have you done it that way before?

8 A Yes; I have.

9 Q Is that standard in the scientific community?

10 A It is the standard along with other methods, of course.
11 But it has been accepted in, in the courts in the state of
12 Georgia and in other states.

13 Q How long in Georgia?

14 A Uh, as far as I know, since before I started with the
15 laboratory system in 1974.

16 Q Has the techniques, has the techniques you used, have
17 they gained general acceptance in the scientific community?

18 A Yes; they have.

19 Q And have they been accepted in the scientific community
20 for a number of years?

21 A Yes; they have.

22 Q Is that why you use them?

23 A Yes, sir.

24 Q Have you talked to other people at conferences or
25 meeting or seminars about such as that?

1 A Yes. Not necessarily specifically at many conferences,
2 but at several meetings I have discussed the, their techniques
3 with them, and their techniques and our techniques, this being
4 conferences of the Southern Association of Forensic Sciences and
5 our techniques are the same as theirs.

6 Q Did you bring a book? Did we ask you to bring a book?

7 A Yes; I did. You asked me to bring a --

8 Q What's the book?

9 A -- a book. In this case it's Footwear Impression
10 Evidence by William Bodziac (ph.). And this seems to be the
11 bible in the, in the field currently.

12 Q Bodziac? Who is he?

13 A He is a supervisory special agent with the Federal
14 Bureau of Investigation.

15 Q What is that book titled?

16 A Footwear Impression Evidence.

17 Q Have you ever read it?

18 A Yes; I have.

19 Q And does he talk about the techniques you use?

20 A Yes; he does.

21 Q Are they acceptable to him?

22 A They are and they are used by him in his everyday lab
23 work.

24 Q Have you ever met him, or just read, read his book?

25 A I have not met the gentleman. I have read several

1 articles and his book and -- but I've not met the gentleman.

2 Q The techniques you used in this case, were they
3 described by him in his book?

4 A Yes; they are.

5 Q And are they techniques that he uses?

6 A Yes.

7 MR. HARDY: Your Honor, we want to -- I don't want to
8 take his book away from him, but we'll offer it into
9 evidence for whatever it's worth and have it xeroxed or
10 whatever Mr. Mears wants us to do. He may have seen it
11 or --

12 MR. MEARS: Well, Your Honor, I think it's a, a, an
13 accepted publication in the field of forensic scientific --
14 I don't know of any reason it needs to be put into
15 evidence. We certainly don't have any objection to it. But
16 I think the rules say that an expert can rely upon material
17 that is published and generally accepted as authoritative
18 in different fields without it being introduced into
19 evidence. So, I certainly don't have any objection to Dr.
20 Howard referring to it, making reference to it. I concur
21 it is recognized as one part of the authority in this
22 particular area.

23 THE COURT: All right, sir.

24 BY MR. HARDY:

25 Q You'll keep a copy if the Judge wants to see it or the

1 court record needs to have it xeroxed or whatever, we'll have it.

2 A If needed; yes, sir.

3 Q This edition and this copy of this book. Is that
4 correct?

5 A Yes, sir.

6 MR. HARDY: We'd offer it but we can just let him keep
7 it. Is that all right with you, Mr. Mears?

8 MR. MEARS: Yes, sir.

9 BY MR. HARDY:

10 Q And the Court can read it or look at it if the Court
11 wants to. You have no problem with that; do you?

12 A It will be available; yes, sir.

13 Q Okay. This is the standard treatise on shoe
14 impressions?

15 A It is one of several; yes, sir.

16 Q The methods you used, have they, in your opinion,
17 reached a scientific stage of verifiable certainty to rest upon
18 the laws of nature?

19 A The method, the method and procedures are, are based on
20 the laws of nature in that we are using, uh, as an example, a
21 scientific method, which includes observation, experiment and
22 arrival at facts, if possible. Uh, the scientist, the forensic
23 scientist, I, I would, would venture to say is a finder of fact
24 if possible and he bases his opinion on those facts.

25 Q Is that what you did in this case?

1 A That's what I did in this case; yes, sir.

2 Q And for us lay folks, what did, what did it meant --
3 what does it mean that the scientific community rests upon the
4 laws of nature?

5 A I think we are using, uh, science to arrive at facts
6 and that science can include physics, chemistry, mathematics
7 which are based on the laws of nature.

8 Q Is that what ya'll do, did, or do in the scientific
9 community in reference to this particular field?

10 A Yes, sir. We do use methods that have been used in, in
11 other fields of science. Forensic science is still relatively
12 young. Its foundations probably go back, oh, a little over a
13 hundred years. And, of course, compared to the other sciences we
14 are an infant.

15 Q Can you say with verifiable certainty that the tests
16 that you used are accurate, accurate and reliable means of
17 ascertaining the comparison of the shoeprints, the pictures and
18 the plaster casts from the known shoes?

19 A Well, they, they have been, they have been used now for
20 some years. And, and I think the acceptance in the, the
21 scientific community does give the validity to the reliability of
22 the methods.

23 Q For what you did?

24 A For what I did.

25 Q What did you do exactly? The plaster casts --

1 A The plaster casts were, uh, were cleaned. They were --

2 Q Let me show you Number 13 here. Excuse me. Mr. Mears
3 or his folks have seen these. What are these?

4 A Uh, there's no exhibit number on these yet?

5 Q 13.

6 A 13. All right. Exhibit 13 --

7 Q What's this box contain?

8 A -- is a box which contains two plaster casts, one of a
9 left shoe impression and the other of a right shoe impression.

10 Q These are casts used in your analysis?

11 A These are the casts used in part in the analysis.

12 Q You also had, I think, four pair of shoes?

13 A There were four pair of shoes submitted.

14 Q You brought them to court too?

15 A Yes.

16 Q Excuse me. These boxes, did you bring them to court?

17 A Yes; I did.

18 Q Do they contain the four pair of shoes we're talking
19 about?

20 A Yes, sir.

21 Q And also, I think, the pictures that you looked at?

22 A And, and the photographs that were also submitted.

23 Q These are the shoes you used in that comparison you
24 just referred to?

25 A Yes, sir.

1 Q Did you also let Mr. Newt do the same thing?

2 A Yes. Dale was afforded the opportunity and he did do a
3 comparison on the, uh, the plaster casts and the submitted shoes
4 from Mr. Cromartie.

5 Q Did he do any tests that you didn't do?

6 MR. MEARS: Your Honor, I'm going to object. I'm
7 going to object to the question. He can only testify as to
8 what was done in his presence, unless he knows.

9 A I, I do know. Yes, he did make an overlay --

10 THE COURT: Overruled.

11 A -- which I did not. An overlay being a copy of the
12 known shoe outsole. I did not do that in my comparison.

13 BY MR. HARDY:

14 Q Did you get a determination of the shoe size?

15 A Uh, from the cast?

16 Q Yes, sir.

17 A Not an exact shoe size. Just a, a relative shoe size.

18 And they were of the same dimensions as the outsole dimensions on
19 Mr. Cromartie's shoes.

20 Q Tread?

21 A Yes.

22 Q What'd you do on the tread?

23 A That was also similar.

24 Q And then just for the record, what is the opinion that
25 the scientific community will give under those circumstances with

1 shoes, hair, et cetera?

2 A You can, you can arrive at a, at, at a degree of
3 probability. A quantitative probability is not quoted. But that
4 the probability exists that the known shoes of Mr. Cromartie
5 could have made that impression.

6 Q That is the scientific terminology that you would use
7 if you were to testify?

8 A Yes, sir.

9 Q You don't say beyond a reasonable doubt that these are
10 the same thing you say --

11 A I, I cannot say that this is the only pair of shoes
12 that made that impression.

13 Q That's just the scientific community's way of saying
14 that?

15 A Yes, sir.

16 Q Is that what you would say if you were to testify?

17 A Correct.

18 Q And you would not be allowed to say, in my opinion
19 these are his shoes, made this shoeprint?

20 A Not, not from the facts that I have.

21 Q One other thing. You say they look like they're the
22 same?

23 A They, they are similar in appearance, and I could not
24 eliminate them, which is the other alternative.

25 Q Could you eliminate the other three pairs?

1 A I did eliminate the other three pairs; yes.

2 CROSS EXAMINATION

3 BY MR. MEARS:

4 Q Good afternoon, Dr. Howard.

5 A Good afternoon.

6 Q Dr. Howard, my questioning -- And I think you
7 understand the purpose of this hearing is to determine whether or
8 not a testimony pursuant to what is commonly called the Harper
9 Standard in Georgia, as to whether or not testimony with regard
10 to this particular procedure and your findings in this particular
11 area can be given as a scientific opinion as --

12 A I understand. Could you please, just briefly, explain
13 the Harper decision?

14 Q Yes, sir. And I, I thought that may be the way I would
15 start and I -- If you'd give me that opportunity?

16 A Yes, sir.

17 Q You understand that as a forensic scientist the Georgia
18 courts, unlike other courts, the federal courts or other courts,
19 have a somewhat different standard for determining the
20 admissibility of scientific opinion.

21 MR. MEARS: And if I might be permitted, Your Honor,
22 just to the Harper opinion at 292 Southeastern 2d., 389.
23 It says that, "We hold that it is proper for the trial
24 judge to decide whether the procedure or technique in
25 question has reached a scientific stage of verifiable

1 certainty, or in the words of Professor Irvin Younger,
2 attorney, whether the procedure rests upon the laws of
3 nature."

4 Q I would submit as part of my questioning, I'm going to
5 ask you questions about the laws of nature prong of that and the
6 verifiable certainty prong.

7 A Yes, sir.

8 Q And if you will permit me, I would address some
9 questions on each of those prongs.

10 A Go ahead.

11 Q Now, with, with regard to -- And, please understand,
12 Dr. Howard, my questioning do not go to your expertise as a
13 forensic scientist. It goes to the general nature of this
14 particular procedure. You understand the nature of that?

15 A I do. Yes; I do.

16 Q Would you describe how this procedure of identifying
17 foot, shoeprints falls within the laws of nature? Mr. Hardy
18 asked you a question, but how would you describe this particular
19 procedure that you have employed, how does that fit within or use
20 the laws of nature?

21 A Good question. I, I would answer that by going back to
22 what is a law of nature. I think that is a, a law that perhaps
23 governs and has been arrived at through experimentation,
24 observation and the application of, of theories to explain these
25 laws of nature. A law of nature being something that may explain

1 why certain things occur the way they do in, in nature. But
2 using the laws of nature, or the techniques that have been, that
3 have been applied to, to try to explain the laws of nature were
4 used in this case. That of observation which includes the
5 comparison of one object to another to ascertain are there
6 similarities, are there differences. And then the, the using of
7 these observations to make conclusions. In this case one that is
8 one of similarity, not, uh, one to one identification, in that
9 these shoes are not identified as having been the only pair that
10 could have made that shoeprint or that impression. But by using
11 these, these techniques I think we are using the laws of nature
12 to arrive at, hopefully what we call facts which is really what
13 we're about. I'm not sure that I can add any more than that to
14 it.

15 Q Let me ask a couple of questions to perhaps clarify,
16 for my benefit, your response. You indicated that one of the
17 laws of nature that you're applying to this procedure or to this
18 technique involves the ability of the examiner to make visual
19 observations and record those visual observations in some way as
20 to say these patterns are the same, they're similar or they are
21 not similar or not the same?

22 A Correct.

23 Q Is that correct?

24 A Yes, sir.

25 Q That would be different, would it not, from a more --

1 that would be different from a law of nature such as certain
2 liquids turn to solids at certain temperatures; would it not?

3 A That's a certainty; isn't it?

4 Q That's right. A law of nature --

5 A That indeed is a law.

6 Q That water would freeze at a particular temperature
7 given --

8 A Given certain conditions; right.

9 Q -- conditions?

10 A Right.

11 Q And you could, as a scientist you could verify that if
12 it's water it's going to freeze under the same conditions each
13 time at that temperature; is that correct?

14 A That's correct.

15 Q That would be different from the application of the
16 more subjective visual observations that might be made, even by a
17 trained examiner; would it not be?

18 A Correct.

19 Q That if a trained observer looks at certain shoeprints
20 and makes those visual subjective determinations, there's no way
21 to verify those findings by an application of the law of nature;
22 isn't that correct?

23 A Define verify here for me?

24 Q Okay. Verify would be where you would have blind tests
25 so that if you had, say, two shoeprint identifications and you

1 did those one hundred times, under the laws of nature if you are
2 applying verifiable certainty, the same observations and the same
3 results should occur each time those one hundred observations are
4 made. Isn't that correct?

5 A That is correct, and, and should not vary from examiner
6 to examiner.

7 Q That's correct.

8 A However, if the same techniques are used, if the same
9 observations are used, and the same, uh, facts arrived at in the
10 case are used, then the observation should lead to the same
11 conclusion.

12 Q Is there any way to systematically verify that
13 particular premise when it comes to the comparison of a shoeprint
14 with, say, a shoe outer sole?

15 A To verify?

16 Q For example --

17 A To, to -- Go on. Go on.

18 Q If an examiner in Moultrie, Georgia makes an
19 observation with regard to a determination that this shoeprint is
20 similar to a known shoe sole, and the same examiner with the
21 Canadian Royal Mounted Police looks at the same shoeprint and the
22 same outer sole, is there a way to verify which one of those
23 observations, should they differ, is correct and which one is
24 false?

25 A There should be by the -- I, I would think that in this

1 case we would want a third opinion to verify which one of those
2 may be correct.

3 Q Okay. Isn't it true, Dr. Howard, that in the field of
4 forensic science that blind testing and peer review of testing is
5 one method of determining whether or not a particular procedure
6 is, has verifiable certainty?

7 A Yes. Yes.

8 Q Is there any study, to your knowledge, that would show
9 that blind testing and peer review of test results have been done
10 in the area of shoeprints?

11 A I'm not aware of one.

12 Q And you -- As many as --

13 A Even though the procedures of blind testing and peer
14 review are employed in the, the Georgia lab system.

15 Q Granted. And, but as far as the general accepted
16 scientific procedure that we're talking about, you know of no, of
17 no peer review testing or blind testing of, say, a cross section
18 of footprint identification in the United States? That has not
19 been done; has it?

20 A I'm not aware that there has been a total peer review
21 of examiners. It, it is a, if, if I'm not too far off the mark,
22 a voluntary type of endeavor with the testing of, of all
23 procedures, whether it be firearms or shoeprints or whatever.

24 Q By a --

25 A Or a matter of self-testing.

1 Q Right. But am I not correct in saying that that type
2 of peer review, reviewal, it's been a long morning, --

3 A Review.

4 Q That type of peer review is done on a regular basis
5 within the forensic laboratory across the United States to verify
6 that you're using the proper procedure? That's what got the
7 F. B. I. into recent trouble with -- there was some question
8 about whether they were using proper techniques. That's correct?
9 That's what you're referring to?

10 A Right. Right.

11 Q With regard to any studies or analyses based upon peer
12 review articles and studies and, you know, things of that nature,
13 there have been -- there has been nothing done yet in the area of
14 shoeprint identification?

15 A I don't think there has been in shoeprints. I know
16 there have been in several other endeavors, but --

17 Q But not in shoeprints?

18 A I don't think so.

19 Q Would you agree with me that Mr. Bodziac's book, while
20 it talks about the methods used and things of that nature, it
21 doesn't discuss the scientific basis for shoeprint examination
22 nor the methods for verifying for forensic science procedures in
23 this particular area? The book doesn't go into that?

24 A No; it does not. I believe he leaves that to other
25 publications.

1 Q Right. And, and basically there has been no, like we
2 said back, because at this point in the development you said it
3 was a rather infant science at this point --

4 A On, on forensic.

5 Q Forensic science.

6 A Yes. I believe it still is. I think we're, we're
7 still learning, we're still growing, encompassing, using new
8 methods as they become available.

9 Q Would you agree that, just for the sake of our
10 discussion here, that laws of nature would be used to create
11 identifiable patterns of recurrence of activity or events? That
12 would be one of the attributes of a law of nature?

13 A I agree with that; yes.

14 Q And would you also agree that a law of nature provides
15 a basis for a credible statement of cause and effect?

16 A Yes.

17 Q Water freezes at a certain --

18 A Yes. Yes. Of course, we're, we're using observation
19 in, in the application of these laws. We're using
20 experimentation in the application of these laws. And these are,
21 are scientific procedures that are used in shoeprint comparisons.

22 Q And, and, but using those powers of observation and
23 applying as perhaps Harper indicated it should be applied, a
24 basis for a credible statement of cause and effect, you'd have to
25 take into consideration not only the shoeprint and the

1 observations made of a plaster cast but the conditions and
2 methods surrounding which the plaster cast was made as well?
3 Would you agree with that?

4 A All of the variables, of course.

5 Q Which would include a, a test and a verification of the
6 soil types in which the shoeprint was made? Would you agree with
7 that?

8 A Explain that.

9 Q Different impression depths, widths, different types of
10 impressions would be made in sand as opposed to clay.

11 A As opposed to clay; yes.

12 Q And loamus and other types of soil?

13 A The, the amount of class characteristics, the amount of
14 identifiable characteristics can be governed by the soil type;
15 very certainly.

16 Q And at this point in the use of shoeprint
17 identification, at least in Georgia, there is no procedure in
18 place whereby you test the soil or have testing done as to the
19 variabilities of the types of print, size, width, that sort of
20 thing, that could or could not be made in types of soil; is that
21 correct?

22 A In types of soil. This would be a matter of training
23 of the, of the examiner and, and what he has observed in his, uh,
24 in his own experimentation. It is a recognized part of training
25 procedures. But as applied to each case received; no.

1 Q Okay. It goes back to the basic subject -- And I don't
2 mean to denigrate this in any way, but it goes back to the basic
3 subjective nature of making comparisons of a shoeprint and a shoe
4 sole?

5 A Yes; it does. And, and we can't take the subjectivity
6 out of shoeprint comparisons. We, we can't take the subjectivity
7 out of hair comparisons or, or even firearms examinations or tool
8 marks. That's why we do it.

9 Q One other issue with regard to the laws of nature.
10 Would you agree that as applicable to a law of nature, a theory
11 applying a law of nature could be proved false, if, in fact, it
12 were false, or true, if it were true? The fact that water
13 freezes --

14 Q We're getting back to the application of the scientific
15 method or, or whatever you want to do.

16 Q Yes, sir. Right. I'm just trying to close out, at
17 least my understanding, of Harper as it applies to the law of
18 nature requirement under that. If a theory that is, that
19 involved a law of nature, that theory, if it were false, could
20 be, should be, could -- I'm sorry, Mr. Court Reporter.

21 A If, if you apply the laws of nature to that, it should
22 be shown to be false at one point or another.

23 Q Thank you, Doctor. That's what I --

24 A I agree with that.

25 Q Okay. Now, with regard to the verifiable certainty

1 prong of Harper as I at least read it here today, would you agree
2 that in order for a scientific procedure to have verifiable
3 certainty, the procedure must have some type of error analysis
4 applied to it, to determine whether or not errors can be made,
5 and, if so, to what degree are those errors and how frequently
6 those errors could --

7 A I agree with that; yes.

8 Q Now, let me go back to the soil sample. What error of
9 analysis would have to be dealt with under verifiable certainty
10 requirements? You would have to know what the soil sample was
11 like in which the shoeprint was made, and whether or not -- the
12 consistency of the soil, things of that nature? Would you agree
13 with that?

14 A Yes; I would. I think we're getting into an area of
15 not necessarily needing to be experimented with in each case, but
16 depending on the experience of the examiner taking those factors
17 into account in his opinion.

18 Q Would you agree that the variability of shoe outsoles,
19 this tread designs, things of that nature, would have to be
20 calculated as far as error analysis? As far as -- In other
21 words, you've got to be able to verify that a particular
22 shoeprint in the soil shows the same type of tread mark or
23 characteristic of a particular shoe that you're looking at?
24 Would you agree with that?

25 A Partly. We can't, I don't believe, put a quantitative

1 factor on what you're referring to.

2 Q Let me ask you, and I don't mean to cut you off, but
3 let me ask you with regard to that, Dr. Howard. Is there some
4 method built into the procedures that you use to determine
5 whether or not an outsole on a particular type of shoe relates
6 consistently to the size of the upper portion of the shoe?

7 A Rephrase that a little bit.

8 Q Are, are you familiar with the manufacturing process
9 that's used? Now, I'm specifically speaking about sports shoes.
10 Are you aware of the manufacturing procedure whereby some
11 manufacturers use a variable outsole size of 9, 9 1/2 or 10,
12 using that as an example, of three different half sizes of an
13 outsole on one upper --

14 A On the same upper --

15 Q -- upper side.

16 A I am aware that that does occur.

17 Q So that simply saying that an outsole measures to some
18 degree of certainty to a size 10 shoe, assuming that you've taken
19 into consideration soil, characteristics, things of that nature,
20 that doesn't necessarily mean, would it, that the upper portion
21 of the shoe would be the same size?

22 A Well, apparently not if, if we're assuming the
23 procedure is used to match several different uppers to the
24 outsole.

25 Q And I'm asking you --

1 A But we're not, we're not taking into consideration the
2 uppers in our comparison procedure. We're only basing our
3 opinion on what we are provided with in the impression or the
4 print and we're comparing that to only the outsole.

5 MR. MEARS: Just one moment. Just one moment, Dr.
6 Howard.

7 Q I'm going to use the shoes that were used in your
8 analysis. Not -- This has -- This is not to determine whether or
9 not your tests were correct or not. Just for explanatory
10 purposes.

11 THE COURT: Mr. Mears, while you're recovering the
12 shoes, let me ask a question.

13 Dr. Howard, let me ask you, in your prior testimony,
14 it sounded like what you have done in this particular case
15 was visually compare the plaster cast with the shoe; is
16 that correct?

17 A That's correct.

18 THE COURT: All right, sir. Have you -- You came to a
19 conclusion about similarity. You did not, did not
20 exclude --

21 A Did not exclude nor did I --

22 THE COURT: It's not an identifiable --

23 A -- conclude as the one and only shoe.

24 THE COURT: I guess my question really comes down to
25 whether or not you used any, anything more than your mere

1 visual observation? Did you use any data or analysis other
2 than what one of the police officers may have used in
3 comparing the plaster to the shoes? Did you do anything --

4 A Well, of course, measuring devices. In this case a
5 twelve inch rule to arrive at similarities in length and width.
6 But still not taking into account outside observations or outside
7 data.

8 THE COURT: Thank you.

9 BY MR. MEARS:

10 Q Just using this --

11 A Yes, sir.

12 Q -- using this, is an Adidas shoe. I believe it's one
13 you tested. And the sizes, or at least on the tab, it has,
14 "U. S. at 10 1/2, Great Britain, 10"? That's what --

15 A Right. Yes, sir.

16 Q What I'm by asking -- trying to explain my question, I
17 guess, is that are you aware of the technique that some
18 manufacturers will use an upper 10 1/2 and then the same sole
19 would be, would fit a 10, 10 1/2 or 11 size shoe? In other
20 words, use the same sole and different size uppers?

21 A I'm, I'm not personally aware of that. But, it, to my
22 knowledge, can happen. And we even get in, in, I think some
23 statistical studies of shoe sizes and outsole lengths and so
24 forth, shoe sizes in, say, the, a size 10. The actual length of
25 the outsole can vary to a certain degree; yes. Yes.

1 Q So, when you measure any shoe, known shoe, such as
2 this, and you determine that that shoe has a certain width, a
3 certain length, then that, that doesn't necessarily mean that the
4 upper portion of the shoe would corresponding to that in size, I
5 guess is what I'm saying, because manufacturers use different
6 outsoles --

7 A Right. Right.

8 Q Okay.

9 A Yes, sir.

10 Q Would you agree that the verifiable certainty
11 requirement in a scientific method would also require that there
12 be some type of technique to measure the variability? In other
13 words, a margin of error would have to be established. And so,
14 if you were to make an overlay, for example, over a pair of shoes
15 and measure the overlay with the shoeprint in the soil, would it
16 not be true that in order to have verifiable certainty you would
17 have to be able to come to the same measurement each and every
18 time within a very minimal margin of error?

19 A From a definable margin of error.

20 Q Yes, sir.

21 A I would agree with that. However, in the many
22 variables that we encounter in the making of the impression at,
23 at the site or the scene and the collection of that impression,
24 for instance, in photography or, or casting, and the making of
25 test impressions or, or overlays or, or whatever methods we are

1 employing, there, there is a margin of, I'm not sure it's error,
2 but a margin of variance that I don't believe we can really
3 quantify.

4 Q And, and with regard to shoe ident -- shoeprint
5 identification; is that correct?

6 A Correct. However, as part of the procedure and, and we
7 can go back in this case to perhaps comparing this procedure to
8 the procedure of fingerprint identification, there is a point at
9 which, if there are enough variables, and, and we could call
10 these accidental marks or scratches or gouges or, or whatever, we
11 can arrive at an identification of a shoeprint having been made
12 by a specific shoe.

13 Q That's not the case here?

14 A But that's not the case here.

15 Q And absent any minutia characteristics that you can
16 identify with scientific certainty, the visual observation and
17 measurement of, well, the measurement of the shoeprint, would
18 require some form of variability of measurement technique in
19 order to meet the verifiable certainty standard under Harper;
20 would you agree?

21 A I, I think I would have to agree with that. Being if
22 you're, you're applying absolute certainty to a procedure. We
23 are, uh, were using in this case methods that can arrive at a
24 certainty, but then with other variables factored in we have to,
25 uh, subject our opinion to our experience, what we have to work

1 with and so forth. And I'm not sure that -- And this goes back
2 to the point of the law perhaps, that, that we can be absolutely
3 verifiable that there is, uh, either an exclusion or an
4 inclusion, and because of these factors we, uh, I think we apply
5 our subjectivity to other opinions here.

6 Q And as a scientist, as a scientist you do not want to
7 give an opinion that's based solely on a subjective observation
8 that can't be measured or quantified and then verified. Would
9 that be a fair statement?

10 A Yes.

11 Q Okay. Now, those were, I guess, primarily attributes
12 of verifiable certainty, using the verifiable part of it. Would
13 you agree that the certainty part of verifiable certainty, and I
14 apologize for being such a layman in this area, but if you're
15 saying that something is verifiably certain, to be certain would
16 you agree that the procedure must have some type of articulated
17 evaluation criteria within the scientific community in order
18 to --

19 A It must be, it must be that way.

20 Q Okay. And that goes back to peer review, blind tests
21 and things of that nature?

22 A Correct. Correct.

23 Q Would you also agree that the, in order to be certain
24 under the verifiable prong of that, that it must have articulated
25 evaluation criteria in order for it to be objective, even within

1 the realm of subjective observations? In other words, there's
2 got to be some way to evaluate what a particular scientist may do
3 on each individual evaluation?

4 A Correct. I know of no variance from that in, in the
5 field of peer review and so forth. There must be procedures set
6 up to govern the criteria for, for what you're doing.

7 Q And that's the, really the crux of the scientific
8 community's credibility when giving opinions, is that everyone
9 must assume that the scientist's opinion has been subjected to an
10 articulated evaluation by peer review, data collection, data
11 analysis and that sort of thing? Wouldn't you agree?

12 A I agree. And, and as part of that would be the, the
13 certainty that he has followed the procedures set forth in the
14 scientific community.

15 Q With regard to -- And, thank you for that. I think
16 that that are the questions I have with regard to the certainty
17 aspect. But let me ask you, with regard to shoe analysis,
18 shoeprint analysis, do you know whether or not there's any body
19 of knowledge or data that would reflect the numbers of possible
20 shoes that might fit a particular shoe pattern? Do you know of a
21 data base, like the F. B. I.'s fingerprint data base of known
22 fingerprints and things of that nature? Do you know of anything
23 like that?

24 A An accessible data base?

25 Q Yes, sir.

1 A I have not used one before. I'm not sure. It, it
2 could exist. I, I have not used it. I know that there are
3 statistics that are available for the, the number of shoes or
4 pattern outsoles that are made by the different manufacturers.

5 Q And, and that's exactly my point. I've asked you to
6 look, and this is simply -- you were dealing with Adidas shoes.
7 This is, Your Honor, for simply demonstrative purposes, this is
8 the Adidas 1997 catalog. And the shoeprint, the shoes that
9 you've identified, I think, there's a Pro model Adidas and a
10 Super --

11 MR. HARDY: You said it's what now?

12 MR. MEARS: It's -- I'm sorry. I didn't show this
13 to -- I'm sorry.

14 MR. HARDY: What addition?

15 MR. MEARS: The Adidas catalog showing --

16 MR. HARDY: What's the '97 catalog got to do with '94
17 shoes?

18 MR. MEARS: They made the same shoes from 1989 until
19 1997 with the patterns on them. I'm simply using it for
20 instructive purposes to illustrate a point. I'm not, I'm
21 not saying that this shoe is in that catalog. Okay.

22 Q Looking at this catalog, Dr. Howard, would that enable
23 you as a, someone making observations in this particular area,
24 would it be necessary to have some knowledge as to the number of
25 different style shoes that may have the same tread design?

1 THE COURT: Mr. Mears, are you speaking of, in the
2 sense of making a firm conclusion as to identity, or in
3 an exclusionary process?

4 MR. MEARS: Making identification and exclusionary.
5 For that reason, Your Honor, if I could use this shoe here
6 that, and this is simply for explanation of my question.

7 Q The one with the -- this one here. Super Pro Model
8 with the three lines.

9 A The Super Star or in this case --

10 Q Super Pro --

11 A The Super Pro Models. It has the high back.

12 Q Right. Would you look and see what type of soles are
13 used on the high back Pro Model and the type of soles that are
14 used on the low cut Super, what is it?

15 A That's called the Super Star there.

16 Q Can you tell from looking at that whether or not there
17 are two different shoes that use the same tread, same sole?

18 A They, they look similar here.

19 Q If you would read the annotation that goes under each
20 one of those? I think it gives the tread, the tread mark. Where
21 it says, midsole, outsole.

22 A Outsole. One mentions -- All right. They're both of
23 dye cut manufacturer on the midsole. Rubber coat sole with
24 herringbone profile on the Pro Model, and the rubber outsole with
25 herringbone profile on the Super Star. In terms of the actual

1 pattern, they appear to be the same.

2 Q The herringbone is a traditional pattern that's used in
3 shoe manufacturing; is it not? Well, can you look at that and
4 see just by making a visual observation? Does it appear that the
5 herringbone model that's shown in the Super Pro Model is the same
6 that's used in the other model?

7 A It appears to be the same.

8 Q It appears that the shoe manufacturers are selling us
9 the same, the same sole with just different tops and different
10 names; would it not?

11 A Well, this is customary. One manufacturer may have
12 several different shoe models with the same sole pattern.

13 Q Okay. That, that would be important in making the
14 determination as far as exclusionary shoes, the number of shoes
15 that could be excluded from a particular print?

16 A Possibly; yes.

17 Q Just assume for my question that if there were, between
18 1989 and 1994, there were eight hundred and twenty thousand six
19 hundred and fifty (820,650) pairs of the Pro Model shoes made in
20 the United States --

21 A Um-hum (affirmative).

22 Q -- and during that same period of time there were one
23 million three hundred and eighty-seven thousand four hundred and
24 twenty-four (1,387,424) pairs of the Pro Model made in the United
25 States --

1 A You mean of the Super Star?

2 Q Yes. Pro Model and Super Star.

3 A Okay.

4 Q So that you would have approximately, you know, over
5 two and a half million (2,500,000) shoes with the same tread
6 design. That would be important to consider in developing any
7 data base to make comparisons and things like that; would you
8 agree?

9 A It could be.

10 MR. MEARS: Just one moment, Dr. Howard.

11 I believe I'm through, Dr. Howard. Let me check with
12 Dr. Newt to make sure.

13 Excuse me one moment, Your Honor.

14 Q Now, Dr. Howard, I understand that your laboratory, as
15 other forensic laboratories in Georgia, undergo a periodic peer
16 review of your procedures and things so that you maintain the
17 standards that are required to be certified and to do scientific
18 work. But within the area of shoeprint comparison, is there any
19 procedures in place to verify under the standard that we've
20 talked about, verifiable certainty, observations and
21 identifications that are made, both exclusionary and
22 inclusionary, with regard to shoeprints?

23 A Within the lab system?

24 Q Yes, sir.

25 A There, there is no current case review currently in the

1 Georgia system. However, we do go through the blind testing
2 procedures. And to my knowledge, there have not been any
3 insufficiencies in that regard.

4 Q And those blind testing procedures cover all the areas?
5 Hair comparisons, fingerprints --

6 A Hair comparisons --

7 Q -- everything?

8 A -- shoeprints, firearms.

9 Q And those are done internally for the purposes of
10 maintaining standards --

11 A Internally and externally in that we apply external
12 testing to our scientists.

13 Q Okay. But, once again, there's been no, in the
14 scientific community there's been no peer review articles that,
15 where tests have been performed in a controlled environment so
16 that those test results can be examined and submitted to peer
17 review with regard to shoeprint identification; is that correct?

18 A I'm not aware of any.

19 THE COURT: You're speaking whether or not, you're
20 speaking whether or not -- not whether or not it's been
21 done but whether or not there are any articles about it?
22 Is that what you're asking?

23 MR. MEARS: That's correct, Your Honor.

24 Q And let me ask you this. Is it not customary within
25 the scientific community to publish peer articles and results of

1 tests and that sort of thing and submit them to peer review for
2 the purpose of maintaining standards within the scientific
3 community? That's not -- That's one of the ways that you do it?

4 A This is one of the ways that we more or less check
5 ourselves.

6 Q All right. And with regard to shoeprint
7 identification, that, you haven't reached that stage yet; is that
8 correct?

9 A Correct.

10 MR. MEARS: Okay. I don't have any further questions,
11 Dr. Howard. I appreciate your patience very much.

12 THE COURT: Mr. Hardy?

13 MR. HARDY: No other questions, Your Honor.

14 MR. MEARS: Your Honor, we at this point will submit
15 the issue to the Court. I think that we've put about as
16 much as we could put before the Court through Dr. Howard
17 regarding this issue.

18 THE COURT: Thank you, sir.

19 MR. HARDY: He's needs to go to court in Cairo, Judge.
20 He's got to testify in another case over there about right
21 now.

22 THE COURT: Okay. Thank you, sir.

23 MR. MEARS: Your Honor, insofar as our --

24 THE COURT: Dr. Howard, let me just ask you a couple
25 of quick questions before you get away from us. And I guess

1 it's going to be some of the same stuff that you've been
2 asked. I'm trying to do it a little bit more directly.

3 And that is, and I think you've already asked -- been
4 asked and answered this. Can you tell me whether or not
5 in your opinion this particular procedure that you used for
6 shoeprint comparison, in your opinion, has reached a state
7 of verifiable certainty? I'm talking about the procedure
8 that you used to make your comparison.

9 A In other words, do, do I believe the procedure I'm
10 using is correct to the point that it can be verifiable and, and
11 be certain in the results each time? I think that's what you're
12 asking. The, the opinion of a hundred examiners should be the
13 same if there were verifiably certain. And in terms of the
14 possibility or probability, that opinion could vary from
15 scientist to scientist.

16 THE COURT: Dr. Howard, you understand that DNA
17 analysis, the opinions of persons who analyze DNA are not
18 always the same?

19 A Correct.

20 THE COURT: DNA analysis has been held to satisfy, that
21 particular procedure, those tests have been held to satisfy
22 those particular legal criteria regarding admissibility?

23 A Yes, sir. Yes, sir.

24 THE COURT: As have other tests. I don't think, I
25 don't think it's a correct characterization --

1 A That area of opinion --

2 THE COURT: I don't think it's a correct
3 characterization that there can be no variance of opinion --

4 A In, in a verifiable --

5 THE COURT: -- as a result of following -- Not in a
6 legal interpretation --

7 A You, you asked me if it were my opinion. And, and I
8 would say yes in that we're following procedures that are used
9 and would be used by another expert. We are arriving at facts
10 based on that, on those observations and procedures. And, and in
11 the application of peer review and blind testing we are
12 attempting to fulfill the spirit of the law here, I believe.

13 THE COURT: All right, sir. I guess that follows up
14 to another question in regards to blind testing both
15 within and without particular agencies you've worked for as
16 to the reliability of the procedure followed in establishing
17 with sufficient certainty and reliability -- I may be
18 asking the same question in another way.

19 A I think because we have arrived at procedures that we
20 use now, and it's been one of trial and error, that the certainty
21 aspects of the procedure are accepted. And, again, this would
22 depend on the laboratory and the expertise of the, of the
23 examiner.

24 THE COURT: You understand my interpretation, be it
25 right or wrong, my interpretation is the test looks at the

1 procedure. It doesn't look at whether or not everyone who
2 goes through this particular procedure when analyzing DNA,
3 shoeprints, hair, fingerprints, et cetera, it doesn't mean
4 that they've all got, got to ultimately form the exact
5 same conclusion. That's not the test, in my opinion. The
6 test is whether or not the procedure has reached a state
7 of verifiable certainty and whether or not the procedure
8 you followed can give results with some reasonable
9 certainty.

10 A I believe that it can.

11 MR. MEARS: Your Honor, may I ask a question based
12 on the Court's --

13 THE COURT: Yes, sir.

14 MR. MEARS: And I don't --

15 THE COURT: Yes, sir.

16 BY MR. MEARS:

17 Q You said that the procedure that you used. What about
18 the verifiable part of that prong, Dr. Howard?

19 A The, the verifiable part in, in terms of peer review
20 and blind testing --

21 Q And taking into consideration --

22 THE COURT: Mr. Mears, are you speaking of verifying
23 the accuracy of the procedure?

24 MR. MEARS: Yes, sir.

25 THE COURT: Is that correct?

1 MR. MEARS: Yes, sir. Not, not verifying the accuracy
2 of the --

3 THE COURT: The ultimate opinion --

4 MR. MEARS: -- the ultimate results; no. Verifying the
5 accuracy of the procedure. And my questions, that I
6 understood earlier, that there's been no peer review
7 analysis, there's been no data collected, been no tests to
8 satisfy that particular prong of Harper.

9 THE COURT: I understand --

10 A However, he asked my opinion and, and that's what I'm
11 giving.

12 MR. MEARS: No. And understand I'm not arguing, Judge,
13 and I'm certainly --

14 THE COURT: I know there was testimony that there have
15 been, you know, blind tests done in regards to this both
16 inside and outside the agency. To what extent, from your
17 knowledge, to what extent have these blind tests been done?
18 And I'm speaking geographically, numerically? How long has
19 this been carried on?

20 A I can only speak for our system, Your Honor. And we do
21 undergo a yearly proficiency testing procedure. And included in
22 that procedure are shoeprint and tireprint proficiency tests.
23 Personally I, I have had two in the last eighteen months.

24 THE COURT: Who outside of the agency does the blind
25 tests?

1 A There is a testing organization that provides these
2 outside tests to the forensic community.

3 THE COURT: Specifically in shoeprint comparisons?

4 A As part of their testing procedure.

5 THE COURT: Are they a national organization --

6 A Yes; they are.

7 THE COURT: -- that provides this throughout the
8 country?

9 A Yes; they are.

10 THE COURT: Are they international?

11 A They are the international -- I'm, I'm not sure.

12 MR. BRYANT: I'm sorry. I couldn't hear what you said.

13 A The --

14 THE COURT: Is the ASC, whatever? Do you recall the
15 name of the organization?

16 A The -- I can't remember their name now. It escapes me.
17 I know it's a national testing procedure. Whether it's
18 international, I, I don't think so.

19 THE COURT: Do you know whether or not they, they do
20 this blind testing for other agencies, persons,
21 organizations in regards to shoeprint comparisons?

22 A I believe they do. They provide this service and it is
23 a voluntary testing procedure that agencies can subscribe to.

24 THE COURT: Do you have any idea how long blind
25 testing procedures have gone on in Georgia in shoeprint

1 comparison?

2 A I do not know that.

3 MR. MEARS: Could I ask another question with regard
4 to hair comparison?

5 A Yes.

6 Q Would you place the procedures and techniques that are
7 currently in place in using identification procedures for
8 shoeprints the same level of verifiable certainty as hair
9 comparisons?

10 A The same level?

11 Q Yes, sir.

12 A Let, let me answer it this way. There is, there is a,
13 there's more subjectivity to hair comparison procedures than,
14 than shoeprint comparisons.

15 Q Would you --

16 A Almost totally subjective.

17 Q Almost totally subjective. And absent any of the other
18 variable, be it the measurement variables, those type of
19 quantitative factors that you plug in, shoeprint is almost all
20 subjective too; isn't it?

21 A No. I, I don't believe so. In my opinion, it's not
22 almost totally objective. I think there are --

23 Q What, what --

24 A You mean subjective?

25 Q Right.

1 A There is some objectivity to it, more so than in hair
2 comparison.

3 Q All right. What objective criteria apply under the
4 verifiable certainty standard and the laws of nature standard
5 that's required in Harper?

6 A Certainly, we want to -- and here we're talking --

7 THE COURT: I'm not absolutely sure he understands what
8 Harper requires.

9 MR. MEARS: I'll be glad to let him look at the
10 opinion, the laws of nature and verifiable certainty
11 standard.

12 Q Do you want to look at the Harper --

13 A I, I almost get the impression here that, that this,
14 that the application of Harper gives us no leeway. But
15 apparently it does.

16 THE COURT: You're speaking of no leeway insofar as
17 whether or not the ultimate results of the --

18 A Exactly. Right. Right.

19 THE COURT: -- facts can handle the variations --

20 A But apparently that's not true.

21 THE COURT: That is not correct.

22 MR. MEARS: Here. It's been delineated right there,
23 at least that portion.

24 A I think what catches my eye here is that the procedure
25 rests upon the laws of nature. And I'm not sure that shoeprint

1 comparisons are to the point of fingerprint comparisons in that
2 case. We, we have more variables, I believe, than, than are
3 present in fingerprint comparisons. Yet we are still using the
4 laws of nature for our procedures.

5 Q You're familiar that the federal courts use --

6 A Am I misinterpreting this particular --

7 Q Dr. Howard, you understand that there's, Georgia has a
8 standard in this particular area that's different from a great
9 number of jurisdictions. It's different from the federal
10 standard which now applies the so-called Dolbert (ph.) standard.
11 And the Georgia standard, based upon the Harper test, the Harper
12 case is different from a great many other jurisdictions.

13 A How, how does this differ --

14 THE COURT: Let me just give you a little bit more
15 information in regards to Harper.

16 A I, I am familiar with the Dolbert (ph.) case --

17 THE COURT: Mr. Hardy, Mr. Mears, if you think I'm
18 misstating it, let me know. Basically, the test for
19 admissibility opinion on a questioned principle, scientific
20 principle, is whether or not, whatever word you use,
21 whether it be test, technique or procedure, has reached a
22 state of verifiable certainty. That is, whether it rests
23 upon the laws of nature. And whether the reliability of
24 the test has been established with sufficient certainty
25 to make that particular test or test results admissible in

1 evidence during any particular court proceeding. Now, they
2 say the court in deciding whether or not the procedure has
3 reached that stage can consider evidence presented by the
4 parties, expert testimony of the reliability and verifiable
5 certainty of that particular procedure, exhibits, treatises.

6 A Exactly.

7 THE COURT: Rationale cases from other jurisdictions
8 concerning that particular procedure, and whether the
9 procedure has been recognized by a substantial number of
10 courts, I mean, the procedure has been recognized by a
11 substantial number of courts, then the court can take
12 judicial notice of that procedure meeting those tests
13 without having to hear any evidence on that particular
14 matter.

15 A How does this --

16 THE COURT: And the scientific community consensus,
17 that is, you know, the consensus --

18 A The, the application of the --

19 THE COURT: -- that is, the consensus themselves is
20 not sufficient, that alone --

21 A All right. Isn't that part of the Dolbert's (ph.)
22 decision --

23 THE COURT: That's part of the consideration, but
24 that alone is not sufficient --

25 A Alone. Which was the old standard.

1 MR. MEARS: The Frye standard you're referring to.

2 A The Frye standard. Now, how does --

3 THE COURT: Of course, you know, in this case all we've
4 talking about right now is whether or not -- I mean, Dr.
5 Howard will be allowed to testify and give his opinion.
6 It's a question right now of whether or not he'll do it as
7 an expert or a lay person. If there's sufficient --

8 MR. MEARS: The magic question, can you to a reasonable
9 degree of scientific certainty, is the magic question here
10 as I understand the issue, Your Honor, is that if it
11 doesn't, the procedure doesn't meet the Harper test now
12 here in Georgia at this particular time, then an opinion as
13 to a --

14 THE COURT: If Harper applies?

15 MR. MEARS: If Harper applies. He can't -- The
16 question cannot be posed in such a way as to apply a
17 reasonable degree of scientific certainty under Harper.
18 Now, certainly, I think, over my objection, the shoeprint
19 testimony will come in as to observations, comparisons
20 and things like that. But to subject it to a, an opinion
21 based upon a reasonable degree of scientific certainty
22 as applied to the Harper standard, which includes the law
23 of nature, which is not a part of the Dolbert (ph.) test.

24 A And that --

25 THE COURT: You're speaking of that these treads are

1 similar to a reasonable degree of certainty?

2 MR. MEARS: That's what I think shouldn't happen,
3 Judge.

4 THE COURT: All right, sir. I could give you an
5 example of some things that our appellate courts have held
6 that Harper applies to and probably something as close to
7 this as you're going to get. I think -- I've been informed
8 there's a case in the Supreme Court at this time that
9 hopefully will address whether or not hair analysis is or
10 is not subject to Harper.

11 MR. MEARS: It's one of Ms. Santa Maria's cases. It's
12 the Pace case that Ms. Santa Maria testified in.

13 THE COURT: An analysis of fibers has been held to
14 be subject to. It's about as close as hair analysis to
15 this.

16 A Well, there's, there's not as much subjectivity in
17 fiber analysis as there is in hair analysis.

18 MR. MEARS: Judge, I don't think I have anything --

19 A I think I understand now the difference between the
20 Harper and the Dolbert (ph.).

21 MR. MEARS: Thank you, Mr. Howard, Dr. Howard.

22 THE COURT: Thank you, sir.

23 DR. HOWARD: I hope we didn't muddy it too bad.

24 THE COURT: No, sir.

25 MR. MEARS: Your Honor, as Mr. Hardy wants to say on

1 occasion, I'll leave it with the Court.

2 THE COURT: All right, sir.

3 MR. HARDY: Mr. Howard is going to Grady County, Your
4 Honor, and he'll be back over here once he gets through in
5 Grady County, I think. If we could let him go on back to
6 Moultrie, or check back with --

7 THE COURT: Gentlemen, let me, let me ask ya'll this
8 question. That's fine. Let me ask ya'll this question.

9 MR. HARDY: Excuse me?

10 THE COURT: The expert testimony is admissible when
11 it's the subject matter that's, or the conclusion addresses
12 subject matter beyond the ken of the average juror;
13 correct?

14 MR. HARDY: Not always. Lay people can give opinions
15 as to whether somebody is crazy or not. They're asked all
16 the time whether they --

17 THE COURT: Well, lay persons can give their opinion
18 of whether -- there are cases and cases and cases of lay
19 persons giving their opinion of whether or not a shoeprint
20 left in mud or dirt or sand or otherwise is similar to a
21 tread on a boot or a shoe or otherwise; correct?

22 MR. HARDY: Yes, sir.

23 THE COURT: Expert opinion is admissible when a
24 conclusion is beyond the ken of the average juror; correct?

25 MR. HARDY: Yes, sir. But still the lay people can be

1 asked their opinion of whether they think somebody has
2 suffered from delusional compulsion, know the difference
3 between right and wrong all the time.

4 THE COURT: That's not what I'm talking about.

5 MR. MEARS: Your Honor, I understand --

6 THE COURT: What, what is the difference in, in -- if
7 you want to qualify Dr. Howard as an expert in shoeprint
8 comparison and from what I've heard he's going to -- I also
9 anticipate you're going to put up some other witnesses who
10 are going to testify in regards to their opinion of this
11 plaster cast and these shoes, whether or not they are
12 similar; is that correct?

13 MR. HARDY: Yes, Your Honor. I'll ask them whether
14 they look similar or not, to look at all four pair of shoes.

15 THE COURT: And what have -- What has the lay person
16 done differently to form that conclusion than what Dr.
17 Howard has done? I mean, he's testified --

18 MR. HARDY: He said he measured it, I think, Judge.

19 THE COURT: It's something a lay person can do -- if
20 a ruler is laying down beside the, beside the photograph
21 of the shoeprints, what have they done differently? What
22 has Dr. Howard done in addition to what these lay persons
23 have done to reach that conclusion?

24 MR. HARDY: From what he's testified, about the same.
25 I don't there's a ruler in these pictures, Judge. But they

1 could -- if you gave them a ruler, I reckon they could go
2 do whatever they wanted to do. Taken all four shoes in
3 totality --

4 MR. MEARS: Judge, if I could -- And one thing that I
5 think that the Court has already touched upon is, I believe,
6 is that when you allow a scientific opinion, and I'm going
7 to read from the notes that we've made, you're requiring the
8 jury to make a decision about the value of expert evidence
9 without the jury having any indication of the weight they
10 should assign to that. But when an expert gets up and
11 testifies you're going, you're probably going to give a
12 charge about how they can deal with expert opinion which
13 is different from other. And Mr. Hardy can argue if it's
14 an expert opinion differently than he could if it were a
15 lay opinion.

16 THE COURT: Give a charge at the conclusion of the
17 case.

18 MR. MEARS: That's correct. And I, and I think that
19 it's certainly not predisposing what charges you will or
20 won't give. But I assume that that will be the question.
21 That's the difference here. I certainly think that under
22 Georgia law, whether I agree with it or not, lay people can
23 give opinions as to different subjects as long as a
24 foundation has been laid and -- they can give an opinion.
25 In condemnation cases gravel pit operators can give opinions

1 about the quality of soil that can be on land without
2 being an expert in, you know, hydrophysics. The difference
3 is how the Court asks the jurors, or tell the jurors how
4 they can apply that evidence and how it can be argued. In
5 this case I just don't --

6 THE COURT: I'll tell them they can measure that
7 witness'credibility just like every other witness and give
8 it what weight they determine it's entitled to.

9 MR. MEARS: But when a scientist gives that opinion,
10 it's like DNA now, and DNA, I think, is different, Judge,
11 but now if you mention -- a scientist gets up there and says
12 it's DNA, jurors take that as gospel because they've heard
13 so much about it. If an expert gets up and gives an opinion
14 without proper weight being assessed to it, and without it
15 being within the Harper test, I think it would be
16 inappropriate. We'd ask the Court to exclude scientific
17 opinions with regard to the comparison shoeprint in this
18 particular case.

19 THE COURT: Thank you, sir.

20 Gentlemen, let's go to lunch. Be back at five minutes
21 until 2:00 and I'll give you a ruling and then we'll resume
22 the trial.

23 (Whereupon the Court is recessed for lunch, and upon
24 reconvening at approximately 2:00 P. M. the following
25 transpired outside of the jury's presence)

1 THE COURT: Gentlemen, at this time based upon, at this
2 time based upon a hearing that was conducted in this
3 particular matter on January the 6th, 1997, and also taking
4 into consideration the matters that the Court's heard today,
5 first, I really don't see a lot of the case law dealing with
6 the subject matter of the Harper test, et cetera, to use
7 this terminology novel or new scientific test procedure,
8 technique. I honestly do not see shoeprint comparison as
9 I have had it related to me by Dr. Howard on these two
10 particular dates as a new or novel scientific procedure
11 or test or technique. It seems hardly to be the type of
12 scientific procedure that Harper applies to. In my opinion,
13 Harper is not applicable to this particular subject matter.

14 And taking it further, if, in fact, shoeprint
15 comparison evidence is deemed to be subject to the Harper
16 test, again based upon the testimony from January the 6th
17 of this year and the testimony today, I do find that the
18 procedure, not of the results, that is the opinion of the
19 examiners, but the procedure used as testified to by Dr.
20 Howard to compare shoeprint with known shoes has reached a
21 stage of verifiable certainty as that term is applied to
22 this particular subject matter. I don't think that we have
23 to find that the procedure is inclusionary as opposed to
24 exclusionary procedure, or at least the results are
25 inclusionary as opposed to exclusionary, nor do we have to

1 find that it's invalid, so to speak, or that opinions based
2 upon those procedures cannot vary among the experts.

3 I also find based upon the testimony and the other
4 information considered that the procedure is an accurate,
5 reliable method of comparison. And further, if there was
6 an established protocol for Dr. Howard to follow in the
7 procedure that he performed, that he did, in fact, follow
8 the established method and protocol in making a comparison
9 of the subject shoe and/or pairs of shoes and the plaster
10 cast impression that was submitted to him.

11 In addition to that, it appears to me from my review
12 of the, some of the case law in this area that the
13 procedure, that being the shoeprint comparison procedure,
14 has reached a stage of verifiable certainty based upon
15 its recognition in the courts of this state for quite some
16 period of time. It was recognized in Rhodes versus the
17 State, a 1996 appellate court case. Expert opinion
18 testimony was proffered in that case and received in that
19 case. And Newman versus State, 216 Ga. App., 73,
20 Holmes versus the State, 205 Ga. App., 168, Hickey
21 versus the State, 202 Ga. App., 636, Carter versus the
22 State, 192 Ga. App., 726, Dorsey versus the State,
23 192 Ga. App., 657. And Newman through Dorsey, I
24 can't really discern from the cases whether it was expert or
25 lay opinion testimony offered. But it was accepted by the

1 court, the opinion testimony was accepted by the court.
2 Expert opinion testimony was accepted in Baty or Baty,
3 B-A-T-Y, versus the State, 257 Ga., 371. Opinion testimony
4 was accepted in Lecount versus the State, 183 Ga. App., 407.
5 Expert opinion testimony in Lowe versus the State, 179
6 App., 377. Opinion testimony in Luther versus the State,
7 255 Ga., 706. Expert opinion testimony in Purvy versus the
8 State and Williams versus the State, co-defendants, reported
9 at 174 Ga. App., 58 and 56. Opinion testimony was accepted
10 in W. G. C. versus the State, 173 Ga. App., 528. Opinion
11 testimony in Hanson versus the State, 251 Ga., 621. Both
12 expert and lay opinion testimony in Rivers versus the State,
13 250 Ga., 288 and Hall versus the State. Likewise both
14 expert and lay opinion testimony reported at 155 Ga. App.,
15 211. Opinion testimony accepted on this subject matter in
16 Carrol versus the State, 147 Ga. App., 332, and Moore versus
17 the State, 240 Ga., 807. And non-expert opinion testimony
18 was accepted in D'Antignac versus the State, 238 Ga., 437.
19 Opinion testimony was proffered and accepted in Johnson
20 versus the State, 238 Ga., 27 and Johnson versus Jackson,
21 140 Ga. App., 252.

22 These cases go back through 1976, over some twenty
23 years. I'm satisfied that there are a number of other
24 cases going much further back than that that deal with
25 this subject matter. And the courts have recognized

1 expert opinion testimony in this particular field.

2 MR. MEARS: Judge, what was the cite in the Baty
3 case?

4 THE COURT: It's B-A-T-Y versus the State, 257 Ga.,
5 371.

6 Based upon that, Dr. Howard's testimony as an expert
7 will be admissible.

8 MR. MEARS: Your Honor, can I ask the Court to allow
9 me just to have another continuing objection to the use
10 of the shoeprint, based not only on -- Well, based upon
11 the Harper challenge to that without going back into that.

12 THE COURT: Based upon the Harper challenge; yes, sir.

13 MR. MEARS: There may be other objections that I need
14 to insert. I just didn't want to waive that by not raising
15 it. There was a really strange case that came out of the
16 Supreme Court this week about one objection is not enough to
17 preserve a particular objection. It wasn't renewed --

18 THE COURT: Do you have the cite on that case, Mr.
19 Mears?

20 MR. MEARS: It was in the Fulton Daily Report. I'll
21 bring it in tomorrow. I was somewhat -- It was reversing
22 the Court of Appeals in the case. I just wanted to make
23 sure that with regard to that issue that I could have a
24 continuing objection right on through Dr. Howard's
25 testimony.

1 THE COURT: Insofar as the issue of the Harper test,
2 either whether or not it is applicable in this particular
3 matter or, if so, whether or not sufficient evidence has
4 been presented to the Court for the Court to make such
5 findings that it will be admissible, that objection to
6 that will be deemed continuing.

7 MR. MEARS: Thank you, Judge.

8 THE COURT: Gentlemen, are we ready to proceed?
9 Excuse me. Ladies and gentlemen?

10 MR. HARDY: Yes, sir.

11 THE COURT: Do we have all sixteen jurors?

12 BAILIFF: Yes, sir.

13 THE COURT: You may bring the jury in.
14 Who's the next witness, Mr. Hardy?

15 MR. HARDY: Henry Williams.

16 (Whereupon the jury returns to the courtroom, after
17 which the following transpired)

18 MR. HARDY: Henry Williams was called, Your Honor.

19 BAILIFF: He's either out there or on the second floor.

20 THE COURT: Henry Williams.

21 Mr. Williams, have a seat right here, please, sir.

22 Mr. Williams, raise your right hand.

23 Do you solemnly swear or affirm that the evidence you
24 will give this Court and this jury in the matter now pending
25 before this Court shall be the truth, the whole truth and

1 nothing but the truth, so help you God?

2 OFF. WILLIAMS: I do, sir.

3 OFF. HENRY C. WILLIAMS

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HARDY:

7 Q State your name for us, please, sir?

8 A Henry C. Williams.

9 Q Where are you employed, please, sir?

10 A Thomasville Police Department.

11 Q Were you so working back during April the 7th, 8th,
12 9th, 10th, till the present with the Thomasville Police
13 Department?

14 A Yes, sir; I was.

15 Q On April the 7th, were you so working on that evening
16 in the nighttime hours?

17 A I've got three different incidents here, so I --

18 Q The Madison Street Deli incident?

19 A Yes, sir; I was. I was working on that date.

20 Q And what shift were you working that night?

21 A I was working the night shift, sir.

22 Q Did you respond to the Madison Street Deli?

23 A Yes, sir; I did.

24 Q And what did you observe when you got there?

25 A There was some more officers on the scene that arrived

1 there before I did. I arrived there shortly after they did. The
2 clerk was -- they were loading the clerk, or rendering first aid
3 to the clerk when I arrived. I think EMS was already on the
4 scene. We went in. Myself and Lt. Baker went into the store.
5 Observed what was going on there. Secured the store. And called
6 the criminal investigators. And --

7 Q Who was called out?

8 A Det. Chuck Weaver, if I'm not mistaken --

9 Q Was it turned it over to him?

10 A Sir?

11 Q Was the scene turned over to him eventually?

12 A Yes, sir; it was.

13 Q Did you see any blood in the store?

14 A Yes, sir; I did.

15 Q Where was that?

16 A On the floor behind the counter over toward the -- if
17 you walk into the store, there's a counter to your right hand
18 side. That counter runs from the start of the door to, back to
19 the little wash area back there where the sink and whatnot was.
20 There was blood from there up to the telephone or up to the
21 register part of the store, which would have been immediately to
22 your right as you walk in the door.

23 Q Let me show you these photographs, 40 -- 33, 39 and 42,
24 please, sir. If you could look at them?

25 A All right. Yes, sir.

1 Q Can you identify them?

2 A Yes, sir; I can.

3 Q What are they?

4 A These are photos that were taken. I did not actually
5 see them taken, but they look like they were taken at the store.

6 Q Are they fair and accurate representations of what you
7 had just seen?

8 A Yes, sir; it is.

9 Q You've testified about?

10 A Sir? Yes, sir.

11 Q 46 and 47? Do they appear to just be close-ups of
12 what's in those photographs? More particular, as to 42 here, and
13 33?

14 A Yes, sir.

15 Q Do they likewise appear to be fair and accurate
16 representations?

17 A Yes, sir.

18 MR. HARDY: Your Honor, we'd offer 46 and 7 into
19 evidence.

20 MR. MEARS: Objection on the basis of relevance, based
21 upon the duplicative nature of the photographs, and also
22 upon the fact that the probative value of the photographs is
23 outweighed by the inflammatory nature of the scene depicted
24 therein. I believe Off. Williams has already indicated
25 they're simply closer-up of the photographs already into

1 evidence. And we would object on that basis.

2 THE COURT: Mr. Hardy, any response in regards to the
3 objection, specifically as to the duplicative nature of
4 the photographs?

5 MR. HARDY: Different photographs of the -- different
6 angles and different views of the scene, Your Honor.
7 They're not the same photographs.

8 THE COURT: Admitted over objection.

9 BY MR. HARDY:

10 Q Did you ever go to the hospital, Mr. Williams?

11 A Sir; I don't remember going to the hospital. I --

12 Q Did ya'll try to find a suspect that particular night
13 for that particular shooting?

14 A Excuse me again?

15 Q Did you try to find a suspect that night?

16 A Yes, sir. That was what -- They issued a, somewhat of
17 a lookout on him; yes, sir.

18 Q Nobody was found that evening?

19 A No, sir.

20 Q Later on, April the 10th, were you working on that
21 date? Saturday night, Sunday morning, Junior Food Store?

22 A Yes, sir -- No, sir; I was not working that day.

23 Q Were you off that day?

24 A Yes, sir; I was.

25 Q Did you get called out?

1 A Yes, sir; I did.

2 Q Back then did you have a dog?

3 A Yes, sir; I did.

4 Q What was the dog's name?

5 A Pete.

6 Q And what kind of dog was Pete?

7 A German Shepherd.

8 Q Had you trained Pete?

9 A Yes, sir; I did.

10 Q All right. Where did you train Pete?

11 A Leon Sheriff's Department in coordination of, through
12 Lively Law Enforcement Academy.

13 Q And at that time, April the 10th, how long had you had
14 Pete?

15 A Since '90. Probably about six, seven years.

16 Q Had you --

17 A I got him in August or, say, October of '88.

18 Q At that time, April the 10th, were you qualified by
19 training and experience to use the dog?

20 A Yes, sir.

21 Q I mean, are you re-qualified every year?

22 A Yes, sir; I do.

23 Q And you are recertified by Leon County S. O. and Lively
24 Tech?

25 A Yes, sir.

1 Q And was the dog trained adequately in tracking humans?

2 A Yes, sir; he was. Very adequately.

3 Q Had Pete tracked humans before?

4 A Several times, sir.

5 Q Was Pete put on a track that particular night that was
6 indicative of flight?

7 A Yes, sir; he was.

8 Q Had, had the trail become so stale and contaminated
9 that the dog wasn't able to track?

10 A Yes, sir. It had come to a stopping point; yes, sir.

11 Q Eventually?

12 A Yes, sir.

13 Q Was it able to start?

14 A Yes, sir. Pulled a good start.

15 MR. HARDY: I'd submit into evidence 167, Your Honor.

16 Let me show it to him, first, show it to -- We've
17 already given it to Mr. Mears.

18 Q 167 here, please, sir, can you identify these items,
19 please, sir?

20 A Yes, sir. These are certificates I received through
21 the Lively Law Enforcement Academy through the Leon Sheriff's
22 County Department where we initially did our training, certifying
23 my dog, sir, recertifying him. I got my initial certification
24 down there too.

25 Q Is that Pete?

1 A Yes, sir; it is.

2 Q Is he certified and you certified back on April the
3 10th of 1994?

4 A Yes, sir; we were certified. Yes, sir.

5 Q Is that the --

6 A Or recertified.

7 Q That first document, what's that?

8 A May 22nd of '92 is this one, this one here. I've got
9 several here. We recertified every year --

10 MR. MEARS: Your Honor, --

11 THE COURT: Mr. Williams, excuse me.

12 MR. MEARS: Your Honor, we're going to object to the
13 line of questioning about the dog. First of all, we would
14 submit it's not relevant to any issues in this particular
15 case. The dog is deceased. There's no basis for putting
16 in the certificates of this officer and the dog. Certainly,
17 the testimony already is the dog was not able to find,
18 track anyone that's related to this particular case. And
19 we would object on the basis of relevancy. It has no
20 relevancy to this particular case at this time, Judge.

21 MR. HARDY: I don't think that's what the testimony
22 was, what I remember, Your Honor.

23 Q Were you able to find a track that night?

24 A Yes, sir; I was.

25 Q Did you track it?

1 A Yes, sir; I did.

2 THE COURT: For the purposes of the record, overruled.

3 BY MR. HARDY:

4 Q Do those have to do with Pete and you?

5 A Yes, sir; they do. Sure do.

6 Q And ya'll, ya'll have been doing this, you and Pete,
7 since what year?

8 A '88. I think it was October of '88. October of '88 is
9 when I received the dog.

10 Q You've been put on track, of tracking humans before?

11 A Yes, sir. Several times.

12 Q Is that part of your training?

13 A Yes, sir; it was. Man tracking; yes, sir.

14 Q On April the 10th were you given an area to track by
15 other officers?

16 A Yes, sir; I was.

17 Q And did you -- did Pete alert on a scent?

18 A Yes, sir; he did.

19 Q And did you start tracking?

20 A Yes, sir; I did.

21 Q And facing the Junior Food Store, which would have been
22 the Junior Food at that time, which way did you go?

23 A The southeast corner of the store which would have been
24 directly in front of the store over to the right. There was a
25 breeze walkway in front of the store there. I pulled a track off

1 the southeast corner of the store. That's where the, I was
2 informed by other officers that, through other sources that the
3 subjects went.

4 Q This area that, 103, is that what you're talking about?

5 A Yes, sir; it is.

6 Q Is that the area the tracks led to?

7 A That's the area that the track started from, sir.

8 Q And did you follow the track?

9 A Yes, sir; I did. My dog was harnessed. He was on a
10 lead and I was right behind him.

11 Q Did you find anything when you were tracking?

12 A Yes, sir; I did.

13 Q What'd you see?

14 A Distinguishable footprints, uh, two Budweiser cans.

15 Q And where, where'd you see the Budweiser cans?

16 A Shortly after I started to track, I don't know if there
17 -- I'm almost certain they're the property or part of Junior Food
18 at that particular time, in a mud hole just to the, be just to
19 the south of the store.

20 Q Excuse me. Let me show you State's Exhibit Number 95,
21 96, 97. If you could look at them for me, please?

22 A All right, sir.

23 Q Are you familiar with that?

24 A Yes, sir; I am.

25 Q What's that?

1 A That is a mud hole in which we found some of the
2 distinguishable tracks leading up to and from right near these
3 Budweiser cans here.

4 Q 98, 99 and 100? Have you seen them?

5 A Yes, sir.

6 Q What's that?

7 A These are the footprints we found, distinguishable
8 footprints that I mentioned earlier, sir.

9 Q These tracks?

10 A Yes, sir.

11 Q And the cans. Did you find anything else in relation
12 to the cans and the tracks?

13 A No, sir. I recall finding the cans, uh, shouting back
14 at the people at the crime scene to please keep everybody back in
15 particularly this area here, that I had found some
16 distinguishable footprints that I -- my dog had pulled a good
17 track with my dog and my dog was tracking good. And I continued
18 on my track.

19 Q Who did you tell that to? Ken Collins?

20 A No, sir. Ken Collins had not arrived on the scene yet,
21 I don't believe.

22 Q You kept other people --

23 A Sgt. Mullins and Lt. Ellis Jackson was in charge, if
24 I'm not mistaken, at that scene. I know Sgt. Chris Mullis was
25 there, sir.

1 Q Where did the tracks lead to? Where did the scent go?

2 A I tracked from that mud hole there, it would have been
3 directly probably southwest, along the north shoulder of Pinetree
4 Boulevard. I tracked along the north shoulder of that roadway
5 until I reached the property of Providence Plaza, into the
6 parking area and into that first building there. Into that
7 parking lot, little parking area there in front of the building
8 is where I lost the track or where the dog indicated that there
9 was no further scent being available for him to track.

10 Q Then the tracking stopped at that point?

11 A He started making circles, sir, as an indication to me
12 that he had run out of scent; yes, sir.

13 Q Then what'd you do?

14 A I backtracked in an effort to find whatever other
15 evidence that I could find. More or less doing an article
16 search. I recall going on the other side of the road, tracking
17 back up. And we went back up to the store. I didn't find
18 anything else. To where the footprints were, and those were
19 preserved by the crime scene technician, I think, Agent, Special
20 Agent Ken Collins.

21 Q You turned the area over to him for investigation?

22 A No, sir; I did not turn the area over to him. No, sir.

23 Q Somebody else? Chuck Weaver or somebody else?

24 A Somebody else did. I don't know who, sir.

25 Q Did you see the other items, the beer flap?

1 A Um, I may have, sir. I wouldn't testify to that fact,
2 because I, I don't recall.

3 Q So then you turned it -- After you did your dog tracks
4 and you turned it back over for the other, Collins and Weaver to
5 do what they --

6 A Yes, sir.

7 Q -- they're the crime scene people?

8 A Yes, sir.

9 Q Then did you go back off duty then?

10 A Yes, sir. I went back home and went to bed.

11 Q And Pete, when did he die?

12 A July the 5th of this year.

13 Q What'd he die of? Old age?

14 A Some type of tumor, sir. I, I never -- They made no
15 autopsy on the dog to find out. That's what Dr. Clinton
16 indicated to me.

17 MR. MEARS: Could we have just one moment, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. HARDY:

20 Q Number 163, I show you this. Is this a fingerprint
21 card, please, sir?

22 A Yes, sir; it was.

23 Q And did you roll those prints, the known prints there?

24 A Yes, sir; I did.

25 Q And are they of Ray Jefferson Cromartie?

1 A Yes, sir.

2 Q Is that Ray Jefferson Cromartie in the courtroom?

3 A That's him right there, sir (indicating the Defendant).

4 Q And you rolled the known prints of Mr. Cromartie, the
5 man right there, on this card?

6 A Yes, sir; I rolled these prints right here on that
7 card.

8 MR. HARDY: We'd offer 163 into evidence, Your Honor.

9 MR. MEARS: Your Honor, we don't have any objections
10 to the card. I think the Court is going to have to look at
11 the card because it's an official document before it's
12 admitted in its present form. I don't have any objection
13 to the card with certain matters being taken into
14 consideration with the card. It's an official form,
15 document.

16 THE COURT: I will admit it at this time and take a
17 look at it in regards to what you've brought to the
18 Court's attention to decide whether or not something needs
19 to be done with regards to the card itself.

20 BY MR. HARDY:

21 Q You didn't see, pick any evidence or take anything into
22 official custody; did you, Henry?

23 A No, sir; I didn't. I only located the evidence that I
24 found along the track. You're referring to that? Am I correct?

25 Q You pointed it out to others?

1 A Yes, sir; I did.

2 Q Okay. Then you went back off duty and went to sleep?

3 A Yes, sir; I did.

4 MR. HARDY: Thank you.

5 CROSS EXAMINATION

6 BY MR. BRYANT:

7 Q Good afternoon, Off. Williams.

8 A How are you doing, sir?

9 Q All right, sir. You have told us today, I believe,
10 that you were involved in two investigations, one at the Madison
11 Deli and one at the Junior Food? Am I correct about that?

12 A Yes, sir.

13 Q Okay. And with regard to -- Let's focus first on the
14 Madison Street Deli. At the time that you went there and
15 participated in the investigation there, there was a lookout, I
16 believe you said, that was posted for a suspect. Is that
17 correct, sir?

18 A Very brief, sir. I --

19 Q The lookout --

20 A The gentleman -- it was received through another
21 officer, sir. I did not receive the, the initial identification.

22 Q Was that a lookout for a black male, stockily built?

23 A Yes, sir. Very, very, very vague, sir; yes, sir.

24 Q But it was a black male, stockily built?

25 A Yes, sir. But I'm not, I'm not even sure about the --

1 I, I distinctly remember a black male, sir.

2 Q Okay.

3 A And the -- That's -- I won't testify to any -- Because
4 I'm not sure about that, sir.

5 Q Okay. Now, in terms of your dog, did you use your dog
6 for that particular event?

7 A No, sir; I did not.

8 Q Okay. Let's move then to the Junior Food Store. You
9 indicated that you and your dog did some tracking down to, I
10 believe you said Providence Property, I believe it was?

11 A Providence Plaza; yes, sir. That's a retirement home.

12 Q How far is that from the Junior Food Store?

13 A A rough estimate, sir, probably four hundred yards,
14 maybe a little further, maybe a little less.

15 Q Okay. About four football fields?

16 A Probably three hundred yards since you're getting --
17 since I'm picturing a football field in my mind. I'd, like I
18 said, give or take, three to five hundred yards.

19 Q Okay. Now, the tracks that I think you said that you
20 observed on the ground, you didn't see anybody place those tracks
21 there; did you?

22 A No, sir; I did not.

23 Q You have no idea of when they came to be put there or
24 how they came to be put there, since you didn't see it done?

25 A No, sir.

1 Q Okay. And in terms of the beer tab that was talked
2 about, you didn't see anybody place that down either; did you?

3 A No, sir; I did not.

4 Q So you have no idea of when it would have got there or
5 how long it had been there, whether it was put there that night,
6 two weeks before that, or a month before that? You have no idea
7 of your own personal knowledge how it came to be where it was?

8 A If I recall right, sir, --

9 Q Well, would you answer my question, sir? First, do you
10 have of your own personal knowledge any idea how those items came
11 to be there?

12 A No, sir. No, sir; I do not.

13 Q Thank you, sir. And nor do you have any idea how long
14 they had been there based upon your own personal knowledge?

15 A Yes, sir; I do.

16 Q And did you observe them or see them?

17 A Yes, sir; I did.

18 Q Did you see them placed there?

19 A No, sir; I did not see them placed there.

20 Q All right, sir. Now, in terms of what you did see, you
21 talked about using your dog to track, if I recall correctly?

22 A Yes, sir.

23 Q And you indicated that you had -- some place had been
24 pointed out to you at the southeast corner of the store?

25 A Yes, sir.

1 Q And you began your search from that point?

2 A Yes, sir.

3 Q And that the dog, as you described it, made a hit, I
4 think you said?

5 A He pulled a track, sir.

6 Q Pulled a track.

7 A Picked up on a scent. When I say pulled a track,
8 that's exactly what I mean.

9 Q All right. Now, do you know from your own knowledge,
10 again based upon the dog, whether or not the track that he pulled
11 had, in fact, anything to do with either of, or anybody who may
12 have been at that store at any particular time? That is, was the
13 track or scent to be picked up, would it have been something that
14 had occurred within the last hour? Could it have been something
15 he picked up, any time frame of what he would have picked up?

16 A I'm not sure I understand your question.

17 Q All right, sir. I'm asking in terms of the scent that
18 the dog pulled?

19 A Yes, sir.

20 Q Is there any time frame upon which the dog would pull a
21 scent?

22 A Yes, sir. You're limited on time; yes, sir. The
23 longer you wait, the more diffused the scent becomes, the more
24 contaminated the area becomes; yes, sir.

25 Q Yes, sir. And so what I'm asking though, sir, is there

1 anyway for you to know as this dog's handler, whether or not that
2 scent had been made within the last, within a half an hour of you
3 making the, picking the scent, or whether it'd been made three to
4 four hours before?

5 A The way he started to track, sir, that scent had been
6 placed there recently, very recently. A time frame, I could not
7 give you that, sir.

8 Q You cannot give me -- In answer to my question, you
9 cannot give me any kind of time frame of when that was placed
10 there?

11 A No, sir. There's been evidence of dogs, not dealing
12 with this particular case, but there's been evidence of dogs
13 immediately tracking a person and up to seventy-two hours. It's
14 been documented.

15 Q So that anything that might have -- For example, the
16 dog might have been tracing something that could have been placed
17 there as much as seventy-two hours beforehand and as recently as
18 ten minutes before?

19 A Not the way the dog started on the track, sir; no, sir.

20 Q It certainly was possible?

21 A Yes, sir; I guess it is.

22 Q Yes, sir. And there's no way for you to know which of
23 those it is at this, at that time?

24 A The way my, the way my dog tracked, sir, those prints,
25 those -- that track I pulled was put there recently.

1 Q And by recently though, you can't give me a time?

2 A No, sir; I cannot.

3 MR. BRYANT: Thank you.

4 THE COURT: Anything else of this witness, gentlemen?

5 REDIRECT EXAMINATION

6 BY MR. HARDY:

7 Q Was it a real fresh track, Henry?

8 A Yes, sir; it was.

9 Q Does it get much fresher, Henry?

10 A Not very much, sir.

11 MR. HARDY: Thank you.

12 THE COURT: You are excused.

13 OFF. WILLIAMS: Thank you, sir.

14 THE COURT: Call your next witness, please, sir.

15 MR. HARDY: Chuck Weaver, please, Your Honor.

16 THE COURT: Raise your right hand, please, sir.

17 Do you solemnly swear or affirm that the evidence you
18 shall give this Court and the jury on the matter now pending
19 before the Court shall be the truth, the whole truth and
20 nothing but the truth, so help you God?

21 MR. WEAVER: I do.

22 THE COURT: Mr. Hardy?

23 CHUCK WEAVER

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. HARDY:

2 Q State your name for us, please?

3 A Chuck Weaver.

4 Q Back during the time period of April, May of '94, where
5 were you working, please?

6 A I was a Detective Sergeant with the Thomasville Police
7 Department.

8 Q And were you the on-call lieutenant or sergeant,
9 whatever, detective, on April the 7th and April the 10th?

10 A Yes; I was.

11 Q Did you get called out on April the 7th to the Madison
12 Street Deli?

13 A Yes; I did.

14 Q How did you get called out, Chuck?

15 A I was called by the dispatcher at the Thomasville
16 Police Department and I responded to that call.

17 Q Did you go down there?

18 A Yes; I did.

19 Q What'd you see when you got there, Chuck?

20 A I was -- saw a crime scene. I was led to the crime
21 scene by Lt. Jerry Baker. Off. Kathy Murphy was there and some
22 EMT's.

23 Q Now, who took -- Did you take any photographs down
24 there?

25 A Yes; I did.

1 Q Are you the one that did that?

2 A I took some; yes.

3 Q Were you able to determine what you thought was the
4 site where the man had been shot?

5 A Yes. I was walked through the area by Lt. Baker and --

6 Q Where did it appear he'd been shot? Mr. Wilson?

7 A Towards the back around the, there's a sink area where
8 you wash dishes and a deli area there. There was blood there,
9 all through the floor area there and up toward the counter area.

10 Q 42 and 45, can you identify those for me, please, sir?

11 A Yes. This is the sink area at the Madison Street Deli,
12 the deli part area.

13 Q Is that the area you're talking about?

14 A Yes. This is the floor area with the blood on it by
15 the sink.

16 Q Is that what you saw that night, Chuck?

17 A Yes; it is.

18 Q Was there a shell casing found there at the scene?

19 A Yes; it was.

20 Q Where was it found?

21 A It was on the floor behind the counter area close to a
22 standing ashtray.

23 Q Was anyone called out to assist in the scene evidence-
24 wise?

25 A Yes. Sgt. Glenn Hutchinson, the crime scene tech, with

1 the Thomas County Sheriff's Department.

2 Q 33, does that -- can you identify that one for me,
3 please, sir?

4 A Yes. This appears to be the shell casing with Sgt.
5 Hutchinson pointing it out with a pen.

6 Q Is that the shell casing you're talking about?

7 A Yes; it is.

8 Q That's in 33?

9 A Yes.

10 Q 34, is that just a closeup of the same thing?

11 A It's a closeup of the shell casing on the floor.

12 Q Whose seized it that night? You or Hutchinson?

13 A I believe it's Hutchinson and Kathy Murphy was the one,
14 I think that was also there present when it was found.

15 Q Did Glenn seize it?

16 A Yes.

17 Q Did you look at it?

18 A Yes; I did.

19 Q What size is it?

20 A It appeared to be a .25 semi-automatic shell casing.

21 Q I'll just let you look at this and let Mr. Hutchinson
22 open it. Have you seen this container before, Number 154?

23 A Yes. It appears to be --

24 Q Excuse me. 156?

25 A It appears to be the cartridge containing the shell

1 casing.

2 Q Are your initials on there anywhere, Chuck?

3 A I'm trying to look --

4 Q Do you see Glenn's on there?

5 A I do see Glenn's. I don't see C. W. on there.

6 Q Taking the case you are seizing -- the shell casing.

7 Was anything else retrieved at the scene other than that?

8 A There was a video that was retrieved from, uh, from the
9 store.

10 Q Who got that?

11 A I believe Glenn Hutchinson and Kathy Murphy were
12 involved in that. I did observe it.

13 Q Did you go to the hospital?

14 A Yes; I did.

15 Q Who did you see at the hospital?

16 A I talked with Dan Wilson. He was there at the
17 hospital.

18 Q What was his condition?

19 A He was, appeared to be in bad physical shape. He had
20 multiple bandages and medical paraphernalia around his face. He
21 was bleeding.

22 Q 37, did you take that picture of him?

23 A Yes; I did.

24 Q So at that time that was about the extent of your leads
25 on that case?

1 A At that point; yes.

2 Q April the 10th, were you working on call that Saturday
3 night, Sunday morning?

4 A Yes; I was.

5 Q Did you go to the hospital there to see Dr. Hall?

6 A Yes. Early morning hours of the 7th, I did.

7 Q Did you get anything from Dr. Hall?

8 A I retrieved a bullet from Dr. Hall, he and his
9 assistant there at the hospital.

10 Q 29, can you identify that?

11 A Yes. That is the bullet that I retrieved.

12 Q Who did you turn it over to?

13 A At this time it was taken to the Thomasville Police
14 Department and put into evidence.

15 Q Who was the evidence custodian down there?

16 A Fran Everett.

17 Q You turned it over to her for safe keeping?

18 A Yes.

19 Q Now, the Junior Food Store. The next day, excuse me,
20 go back to April the 8th, the early morning hours. Did you go
21 down to N. Monroe just south of the store there?

22 A Yes; I did. Myself and several detectives and a patrol
23 officer went down to Monroe Street.

24 Q And who did you see down there?

25 A Uh, I saw the gentleman that lived there, had found

1 something in his yard.

2 Q Mr. McRae?

3 A Mr. McRae; yes, sir.

4 Q Did you retrieve anything from his yard?

5 A Yes. There was a sweatshirt or a sweat type, jogging
6 type thing, and a hat, was there.

7 Q Did you take them into custody, Chuck?

8 A Yes; I did.

9 Q I show you 30-A first. Can you identify that?

10 A Can I pull it out?

11 Q Yes, sir.

12 A Yes. This is a stocking type cap that was there.

13 Q 30-B?

14 A This is the sweat, hooded sweatshirt that was there.

15 Q Did you recover them there at the yard of Mr. McRae?

16 A Yes; I did.

17 Q Did you turn them into Ms. Everett likewise?

18 A Yes.

19 Q Would you put them back in the bag, please, sir?

20 A (Witness complies)

21 MR. HARDY: Your Honor, we'd offer 30-A and B into
22 evidence.

23 THE COURT: They've already been admitted.

24 BY MR. HARDY:

25 Q Now, let's go back to the April the 10th. Were you

1 called out to the Junior Food Store?

2 A Yes; I was.

3 Q And what time did you get there, Chuck?

4 A It was a few minutes after 4:00 A. M.

5 Q Where were you when you got the call?

6 A I was at home.

7 Q When you got there what did you observe? What'd you do
8 first?

9 A I talked to the officers, Lt. Ellis Jackson and Chris
10 Mullins --

11 Q Excuse me. Go ahead.

12 A They advised me there had been a, a person had been
13 found inside the Junior Food Store apparently dead. And at this
14 time I was waiting for the crime scene tech from the G. B. I.

15 Q Who was that?

16 A Kenneth Collins.

17 Q Okay.

18 A And I waited there outside the store till Agent Ken
19 Collins arrived.

20 Q Did you see anyone in the store?

21 A No one was in the store at this time. We had not been
22 in, but I waited and when he got there then we did go in.

23 Q When Ken got there did you go in the store?

24 A Yes; I did.

25 Q What'd you do when you went in the store?

1 A We went around to the food store and around back behind
2 the counter where a body was located laying on the floor.

3 Q Did you determine who that was?

4 A Yes, at some point later in the morning we determined
5 who it was.

6 Q Who was it?

7 A A Richard Slys, Slys, S-L-Y-S-Z.

8 Q 55, is that what you're talking about?

9 A Yes. This is the man that was laying there.

10 Q Was he dead?

11 A Yes; he was.

12 Q So after you and Mr. Collins saw the man, what did
13 ya'll do next?

14 A At this time Agent Collins started processing the crime
15 scene and I assisted him in processing the crime scene.

16 Q What did you do first?

17 A He was taking pictures and we were taking measurements
18 there inside, observing the body, observing the location of the
19 body.

20 Q Mr. Collins took the measurements?

21 A Yes; he did.

22 Q Behind the counter where Mr. Slys was, what did you
23 observe? Did you observe anything in his hands?

24 A I believe there was a pencil close by his hand. I
25 don't believe it's in my notes.

1 Q I show you 52 and 60, if you'd look --

2 A Yeah. I'm at the body now.

3 Q Do they refresh your memory?

4 A Yes. There's a pencil here in his hand.

5 Q Is that the way you found it?

6 A That's correct. And blood about his head.

7 Q Is that a fair and accurate representation of that
8 pencil in his left hand?

9 A Yes; it is.

10 MR. HARDY: Offer them into evidence, Your Honor,
11 52 and 60.

12 MR. MEARS: No objection.

13 THE COURT: Admitted without objection.

14 MR. HARDY: Publish them to the jury?

15 THE COURT: Yes, sir.

16 (Whereupon Mr. Hardy tenders photographs to the jury)

17 Q Was Ken the man that was responsible for the seizing of
18 the evidence, or were you? Which?

19 A Ken was responsible for the, observing the evidence,
20 taking it and, and seizing it; yes.

21 Q Did you find any shell casings?

22 A Yes; there was shell casings.

23 Q Where were they found?

24 A Next to the body there was a small caliber shell
25 casing, around the butt area and out on the floor.

1 Q Were they behind the counter likewise?

2 A Right.

3 Q Did you see the man's face? Did you see his glasses?

4 A Yes; I did.

5 Q What did you observe about his glasses?

6 A There was blood and some of the glass appeared to be
7 broken.

8 Q Did you look under the counter?

9 A Yes; we did.

10 Q Did you see any money under the counter?

11 A There was a bag with money in it.

12 Q Did the area of the store, did you look at the area of
13 the store, each of the aisles?

14 A Yes; we did.

15 Q Was there a disturbance in the store, anything knocked
16 over, turned over?

17 A Uh, at that time we couldn't make a determination of
18 any disturbance. I think later some of the store personnel came
19 out and assisted us in that.

20 Q Was there a safe behind the counter?

21 A Yes; there is.

22 Q Did you look in the safe? Was it open?

23 A Yes; it was.

24 Q Was it locked?

25 A No.

1 Q Was there any money in the safe?

2 A Uh, I believe there was money in the safe.

3 Q Under the counter?

4 A Yes.

5 Q Money under the counter?

6 A Yes; there was.

7 Q Where had it appeared that Mr. Slyszyk had been sitting?

8 A As you walk into the front of the store there's a,
9 right behind the counter close to the cash register there's a
10 chair there, and it appeared that he was, had been sitting there.

11 Q I first show you, Mr. Weaver, 61, 62, 63 and 64. If
12 you can identify those for me, please, sir?

13 A This is a shell casing, small caliber, .25.

14 Q Was that found at the Junior Food?

15 A Yes. Also a shell casing with a ruler by it measuring
16 it.

17 Q Would you refer to the number of the picture, please,
18 sir?

19 A Okay. The first one by, the shell casing by itself,
20 Number 61, shell casing. Number 62, shell casing with a ruler.
21 63, shell casing with a ruler. And 64, shell casing by itself.

22 Q These are all to do with the Junior Food Store?

23 A Yes; they are.

24 Q That's to do with the two casings found behind the
25 counter?

1 A Yes.

2 Q Are each of those fair and accurate representations of
3 what you saw that morning?

4 A Yes; they are.

5 MR. HARDY: Offer them into evidence, Your Honor.

6 THE COURT: Any objections?

7 MR. MEARS: No, sir.

8 THE COURT: Admitted without objection.

9 BY MR. HARDY:

10 Q Did you say there was a bag, or a safe behind the
11 counter?

12 A Yes.

13 Q Would you look at these two photographs, 66 and 67,
14 please, sir?

15 MR. HARDY: Your Honor, could we have the bailiffs
16 could turn a little air on? It's getting, to me anyway, a
17 little hot in here.

18 A 66 is a picture of the safe. There appears to be blood
19 at the bottom of the safe.

20 Q Was that safe open when ya'll got there?

21 A Uh, I'm looking through my notes. It is in this
22 picture here.

23 Q Meaning it wasn't locked, is my question?

24 A No; it was not locked. It was accessible and had
25 several times opened as we looked into it.

1 Q The other picture, 67, I think it is?

2 A Yes. 67 is a picture of the open safe with a bag and
3 coins inside.

4 Q Does that appear to be fair and accurate representation
5 of the way you saw it?

6 A Yes.

7 MR. HARDY: 66 and 67 into evidence, Your Honor.

8 MR. MEARS: 66 and --

9 MR. HARDY: 66 and 67.

10 MR. MEARS: No objection.

11 THE COURT: Admitted without objection.

12 BY MR. HARDY:

13 Q How close to the safe was the man's head?

14 A Real close. It was not far at all.

15 Q You say there was a bag of money. Where was it?

16 A Uh, I believe it was under the counter.

17 Q I show you this photographs here, 81 and 82, please,
18 sir. If you'd look at them.

19 A 81 is a picture of the, under the counter area and the
20 safe to the left as you're looking at it like this, and the cash
21 register and the phone.

22 Q Does it show the bag of money?

23 A There is a blue bag of money there.

24 Q Is that near where Mr. Slys was?

25 A Yes.

1 Q Are they fair and accurate representations of what you
2 saw?

3 A Yes. Both. And also 82.

4 MR. HARDY: Your Honor, we'd offer them into evidence,
5 81 and 82.

6 MR. MEARS: No objection.

7 THE COURT: Admitted without objection.

8 BY MR. HARDY:

9 Q 69, 70 and 68? 68, 69 and 70, can you identify them?

10 A 68 is a picture of the blue Commercial Bank bag,
11 Hometown Spirit written on it. 69, the bag is open. You can see
12 bills and other paper products inside the bank bag. 70, the
13 money is spread out, out of the bag on the, what appears to be a
14 chair there, in stacks of twenty-five, fifties, tens and ones.

15 Q This was in that blue bag?

16 A Yes.

17 Q Under the counter?

18 A Under the counter.

19 MR. HARDY: Your Honor, we'd offer 68, 69 and 70 into
20 evidence.

21 THE COURT: Any objection, Mr. Mears?

22 MR. MEARS: No objections to 68, 69 and 70.

23 THE COURT: Admitted without objection.

24 BY MR. HARDY:

25 Q You went behind the counter area?

1 A Yes; I did.

2 Q Did you see the paper, roll of paper towels?

3 A Yes; there was.

4 Q What was on that?

5 A Uh, it appeared to be some pencil markings on that roll
6 of paper towels.

7 Q Is that in relation to where the man was?

8 A Yes. Close to the body.

9 Q 71 and 72?

10 A 71 shows the paper towels, a roll of paper towels with
11 a, what appears to be a pencil mark and some kind of clipboard
12 with a check-off seat, a check-off sheet. 72 is a closeup of
13 paper, roll of paper towels with a pencil mark and a cash check-
14 off sheet.

15 Q Number 7 here, is this the roll of paper towels that's
16 in those pictures?

17 A Yes. It appears to be.

18 MR. HARDY: Your Honor, we'd offer 7 and 71 and 72 into
19 evidence.

20 MR. MEARS: No objection, Your Honor.

21 THE COURT: Admitted without objection.

22 BY MR. HARDY:

23 Q You say you were behind the counter, Mr. Weaver?

24 A Yes; I was.

25 Q Let me show you these photographs, please, sir. 76, 77

1 and 78, 79, 80, 83, 84 and 85, if you'd look at them for me,
2 please, sir?

3 A 76 shows behind the counter area and the cash register
4 and an ashtray, checkup sheet, a work area there behind the
5 counter and under the counter.

6 Q Is this the scene you observed there when you got back
7 there and found the body?

8 A Yes. 77 shows the same area and a foot of the deceased
9 on the floor by the chair and touching the garbage can. The
10 garbage can in the back there and his foot is right next to the
11 garbage can.

12 Q Yes, sir. What about the next one?

13 A The next one, from a different angle, is behind the
14 counter area, the chair and the foot and some magazines to the
15 right of it. And on top of the trash can there's a clipboard
16 with a check-off sheet and appears to be work related to the
17 store and the cash receipts.

18 Q Next?

19 THE COURT: What number was that?

20 A Excuse me. It was 78.

21 BY MR. HARDY:

22 Q 79 is the next one?

23 A And 79 is the cash register, looking from it, behind it
24 and the lottery scratch off type tickets by there, and the
25 counter area with bags and candy and this type of stuff on it,

1 looking towards the store.

2 Q 80?

3 A And 80 is the same area, same type things and the, I
4 believe the foot is visible in this too. And some blood, some
5 drops of blood or blood smears there on the counter area in front
6 of the ashtray back this side of the ashtray. That would be 80.

7 A closer up of that, being 83, and the blood is closer, a
8 picture of the blood. It shows blood on top of the counter and
9 blood at the edge of it, and cash receipts.

10 Q That was in relation to his seat, just in front of his
11 seat, chair?

12 A That would be right behind the cash register area where
13 the seat is.

14 Q Yes, sir.

15 A Number 84 shows the area, also shows what appears to be
16 blood or as it -- on the edge of the counter as it's coming down,
17 dripping down.

18 Number 85 is blood drops and what appears to be pieces of
19 glass in this area.

20 Q Was the glass in his eyes, in his eyeglasses broken?

21 A Yes. It appeared to be at the time.

22 Q Next photograph, please, sir?

23 A The next one is 76. That was the first one and it's --

24 Q Are each of those photographs fair and accurate
25 representations of the scene as you saw it?

1 A Yes; they are.

2 Q That would be 76, 77, 78, 79, 80, 83, 84 and 85?

3 A That's correct.

4 MR. HARDY: Offer them into evidence, Your Honor.

5 MR. MEARS: 81 has been offered, I think.

6 THE COURT: 81 has already been tendered and admitted.

7 MR. MEARS: No objection to those, Your Honor.

8 THE COURT: Admitted without objection.

9 BY MR. HARDY:

10 Q Did the coroner show up?

11 A Yes; he did.

12 Q Did he pronounce him dead?

13 A Yes.

14 Q Was the body moved?

15 A The body was moved.

16 Q Did you go to the autopsy?

17 A No; I did not go to the autopsy.

18 Q Where was that? Do you know where it was conducted?

19 A I believe the crime lab in Moultrie or Atlanta. I'm
20 not sure which. But it was not in Thomasville.

21 Q Did ya'll determine, you and Ken, in viewing the body
22 how many times it had been shot?

23 A Yes. Twice.

24 Q Where?

25 A In the head area, in his glasses area, around the head.

1 Q Did you talk to Mr. Williams about what he did? Henry
2 Williams?

3 A Uh, briefly there. I didn't talk a lot. I think Ken
4 did the bigger time with Henry Williams.

5 Q And then I think Ken made some measurements and some
6 charts?

7 A Yes; he did.

8 Q Did you see the beer cans?

9 A Yes. I saw them briefly. I was in that area. That
10 was that area --

11 Q Did Ken conduct that search outside?

12 A Ken conducted the, most of that search, to do with the
13 beer cans and that area out there.

14 Q Did you see the beer flap out there as well as the beer
15 cans?

16 A Yes.

17 Q Ken is the one that seized that evidence?

18 A Yes, sir.

19 Q At that time did you see the shell casing at the store,
20 the two shell casings?

21 A Yes.

22 Q Ken, I think, seized them?

23 A Ken seized them.

24 Q Were they -- What caliber? Could you tell?

25 A .25 semiautomatic.

1 Q What caliber were they over there at the Madison Street
2 Deli?

3 A .25.

4 Q So at that time what did you do with the shell casings?

5 A They were tendered into evidence and they were later
6 sent to the crime lab for comparison to see if the same type
7 firearm, they came from the same type firearm.

8 Q So at that time you had no leads as to what, other than
9 talking to Mr. Taylor and Mr. Walsh, who had done this crime
10 either?

11 A Yes; we didn't have any definite leads at that time.

12 Q Did you have any leads then until the, I guess the
13 morning of the 13th, any more leads?

14 A Not until the morning of the 13th.

15 Q On the morning of the 13th, was, were some individuals
16 arrested?

17 A There had been some individuals arrested that, yes,
18 were interviewed, that gave us some information?

19 Q Who, who was interviewed first?

20 A A Carnell Cooksey.

21 Q Who interviewed him?

22 A Myself and Det. Guy Winkelman and also Det. Willie
23 Spencer.

24 Q As a result of talking to Mr. Cooksey was a gun
25 retrieved?

1 A Yes. He gave us information concerning the gun and the
2 approximate area where it might be, and we did retrieve it.

3 Q And where was that?

4 A That was -- If you go out to the jail justice center,
5 the city side, the chief of police side and look toward
6 apartments, I believe they're referred to as the Cherokee
7 Apartments, it was in an area between them, close to a railroad
8 and a concrete pole.

9 Q And did you retrieve it?

10 A Yes; we did.

11 Q Was Mr. Hutchinson there when that was done?

12 A Yes; he was.

13 Q I show you 162, and ask Capt. Hadley to please check it
14 again for us.

15 Would you just pull the clip out and give it to the Clerk?

16 162 here, can you identify this?

17 A Yes. It's a model B25 caliber, .25 automatic.

18 Q Brand?

19 A Raven Arms Industry brand.

20 Q Is that the one you retrieved?

21 A This is the one we retrieved.

22 Q Was it taken to the crime lab?

23 A Yes; it was.

24 Q Had any shell casings already been up there?

25 A Yes; they had.

1 Q Had the bullets from the Madison Street Deli already
2 been taken up there? This item that you got from Dr. Hall?

3 A Yes; it had.

4 Q The shell casings, were they sent to the lab?

5 A Yes; they were.

6 Q From both stores?

7 A From both stores.

8 Q Did Carnell then make other statements to you other
9 than about where the gun was?

10 A Yes. He talked about individuals that --

11 Q As a result of him talking to you, were other people
12 arrested?

13 A Yes; they were.

14 Q Who else was arrested then?

15 A A Corey Clark and a Jeffrey Ray Cromartie and a Gary
16 Young and a Thaddeus Lucas.

17 Q And is that Ray Jefferson Cromartie in the courtroom
18 this evening?

19 A Yes; he is.

20 Q Would you point him out if you see him?

21 A Sitting at the Defendant's table in a white shirt and
22 tie (indicating the Defendant).

23 Q Did you talk to other subjects other than those
24 subjects?

25 A Yes; I did.

1 Q Did you talk to some ladies?

2 A Yes; I did.

3 Q Tina Washington?

4 A Yes.

5 Q Lisa Young Delaney? Lisa Young Delaney? There's also
6 a Tonya Frazier talked to by various people?

7 A Tonya Frazier was interviewed by detectives. Lisa
8 Young, Jerome Delaney, and a Tina Washington.

9 Q Did Carnell Cooksey, was he arrested or let go?

10 A In connection -- He might have been for something else.
11 I did not arrest him in connection with this.

12 Q So there were various other detectives working on the
13 case besides yourself?

14 A Yes; there was.

15 Q And that would have been whom?

16 A Det. Willie Spencer and Det. Guy Winkelman and Lt.
17 Melvin Johnson, and Mark Scott did assist some.

18 Q Okay. Did you retrieve the clothes and shoes from the,
19 Mr. Cromartie, Mr. Lucas, Mr. Young and Mr. Clark?

20 A Yes. There was clothes and shoes retrieved.

21 Q Did you bag them?

22 A Yes; they were bagged.

23 Q Who'd you turn them over to?

24 A The evidence custodian, Fran Everett.

25 Q Let me show you -- If we could just keep them in these

1 boxes, it's easier, Your Honor. Having you stay up here, please.
2 Number 18-B here, these shoes. These seized -- these shoes
3 seized from Mr. Cromartie?

4 A Yes; they appear to be the ones that were seized.

5 Q And these are what color?

6 A White with darker stripes around the edge.

7 Q 14-A, are these Mr. Clark's shoes?

8 A They appear to be in that bag; yes.

9 Q What's the brand of those?

10 A Force Basketball.

11 Q 16-A, whose shoes are those?

12 A Thad Lucas.

13 Q 27-C?

14 A Gary Young.

15 Q Were these all seized from the people at the jail when
16 they were taken into custody?

17 A Yes.

18 MR. HARDY: Your Honor, we'd offer each of these into
19 evidence, 14-A, 16-A, 27-C, and 18-B into evidence, Your
20 Honor.

21 MR. MEARS: Your Honor, we have no objections to
22 14-A, 16-A, 27-C. We're continuing our objection to 18-B
23 based upon those objections that we made previously.

24 THE COURT: Yes, sir. Admitted over objection.

25 BY MR. HARDY:

1 Q Did you see the shoe track out there that morning,
2 Chuck?

3 A Briefly; yes, sir.

4 Q And I think you seized all their clothes here?

5 A At some point their clothes were seized.

6 Q Were they all turned into evidence likewise?

7 A Yes.

8 Q That would be Ms. Everett?

9 A Yes.

10 Q Well, after you got the clothes and you talked to some
11 people, what did you do next then, Chuck?

12 A After interviewing the witnesses and taking statements,
13 warrants were taken for the arrests.

14 Q Did you take any warrants out on Mr. Cromartie?

15 A Ray Jefferson Cromartie, Thaddeus Lucas, Corey Clark.

16 Q Did you have occasion to speak to one Gary Young?

17 A Yes; I did.

18 Q And where was that, please, sir?

19 A It was at the jail justice center, at the
20 investigator's interviewing room.

21 Q That pencil that we talked about, if we could just go
22 back to that a minute. Was that also seized?

23 A Yes; it was.

24 Q 8. Is it likewise what you've already depicted in the
25 pictures?

1 A Yes.

2 MR. HARDY: Offer it into evidence, Your Honor.

3 MR. MEARS: No objection, Your Honor.

4 THE COURT: Admitted without objection.

5 BY MR. HARDY:

6 Q Mr. Young, did you -- Who else talked to you with Mr.
7 Young?

8 A Lt. Melvin Johnson.

9 Q Prior to talking to him did you give him his Miranda
10 rights?

11 A Yes; I did.

12 Q Did you do that or did Melvin do that?

13 A We were both present. I can look at the, the rights
14 form.

15 Q Where, where was it ya'll did that, Chuck?

16 A At the jail justice center.

17 Q Did you make a, use a recording device, Chuck?

18 A Yes; I did.

19 Q And did you know how to operate that recording device?

20 A Yes; I did.

21 Q Did you turn it on?

22 A Yes.

23 Q Had you ever operated it before?

24 A Yes; I had.

25 Q Was a transcription, I think, made of that, of that

1 recording?

2 A Yes; it was.

3 Q Is this the -- I show you 168 here and ask if you can
4 identify that for me, please?

5 A It's a Miranda warning with Gary Lamar Young's name at
6 the top. His signature after waiver of his constitutional
7 rights. And myself, Chuck Weaver, signed as a witness.

8 Q Did you force him to talk to you?

9 A No; I did not.

10 Q Did you coerce him?

11 A No; I did not.

12 Q Hold out any hope of benefit or reward?

13 A No, sir.

14 Q Did you threaten him in any manner?

15 A No.

16 Q Did he ever ask to speak to an attorney?

17 A No.

18 Q In your opinion, did he freely and voluntarily talk to
19 you?

20 A Yes; he did.

21 Q Is it on that tape?

22 A Yes.

23 Q What kind of tape?

24 A A micro mini cassette type tape.

25 MR. HARDY: Your Honor, we'd offer 168 into evidence.

1 MR. MEARS: No objection.

2 THE COURT: It's admitted without objection.

3 BY MR. HARDY:

4 Q And did you, are you the one that operated the machine?

5 A Yes.

6 Q I think it may have stops in the middle of the tape
7 somewhere or another?

8 A Yes. It stops to change or pause. It did stop at one
9 time.

10 Q Did you say, "Here it is what you supposed to say
11 next"? Did you whisper in his ear what to say?

12 A No; I didn't.

13 Q Has it been preserved into evidence since that time?

14 A Yes; it has.

15 Q Who's speaking on the tape?

16 A Gary Young, myself and Lt. Melvin Johnson.

17 Q And the transcript of the tape, is it a fair and
18 accurate representation of the tape?

19 A Yes; it is.

20 MR. HARDY: I think we've already given Mr. Mears one.

21 Q 169, is this the transcription of the tape you're
22 referring to?

23 A Yes; it appears to be. 169.

24 Q 28 here, is the micro cassette that you're talking
25 about?

1 A Yes; it appears to be the micro cassette.

2 THE COURT: What number is that?

3 MR. HARDY: 28, Your Honor.

4 Q 28 goes with 169?

5 A Yes.

6 Q Did Mr. Young make statements to you about the Madison
7 Street Deli crime and the Junior Food Store crime?

8 A Yes; he did.

9 Q Did you force or coerce him?

10 A No; I didn't.

11 Q Hold out any hope of benefit or reward?

12 A No; I didn't.

13 Q Did you threaten him in any manner?

14 A No.

15 MR. HARDY: Your Honor, we'd like to play the tape
16 at this time?

17 THE COURT: All right, sir.

18 MR. HARDY: I think we've already offered them both
19 into evidence. Of course, we know they won't go out with
20 the jury.

21 THE COURT: Let me see Counsel for just a moment.

22 MR. MEARS: Your Honor, we had voiced an objection
23 earlier with regard to the playing of the tape based upon
24 the handling of Mr. Young as a witness in a certain
25 particular form. We simply continue that objection.

1 Subject to that we have no objection to him playing the
2 tape, subject to the objections made at the Bar to Mr.
3 Young's testimony earlier.

4 THE COURT: All right. Thank you, sir.

5 Gentlemen, I still need to see you for just a moment,
6 please.

7 (Whereupon Counsel confer with the Court at the Bench,
8 during which the following transpired)

9 THE COURT: There was some, some reference earlier and
10 I wanted to make sure we're not going to hear anything
11 about Mr. Reddick.

12 MR. HARDY: (Inaudible)

13 (Court reporter advises the Court that he can't hear)

14 THE COURT: Let me tell you this. We're a week and a
15 half into this thing. I don't want any -- I'm assuming
16 that there's nothing on there about him this and that.
17 Okay?

18 MR. MEARS: Judge, I've looked at it. I think it only
19 makes reference to the Cherokee incident. I don't believe
20 it makes reference to the Stevens Street incident with
21 Mr. Reddick. I was concerned about that and I looked at
22 the transcript and I don't believe it mentions anything
23 about that.

24 THE COURT: I just wanted to --

25 MR. MEARS: Yes. Yes. And I've looked at it. We have

1 had Mr. Leonard go and look at that. And at this point it
2 doesn't appear that my fears were --

3 THE COURT: I just wanted to make sure that we don't
4 have any reference --

5 MR. HARDY: Is he satisfied that (inaudible)?

6 MR. MEARS: Yeah. Subject to my continuing objection.

7 THE COURT: All right, sir.

8 (Conclusion of Bench conference)

9 THE COURT: Mr. Hardy, you may play the tape.

10 MR. HARDY: Your Honor, we'd like to pass out
11 transcripts to the jury and the Court for their use if they
12 so desire, with your permission.

13 MR. MEARS: The Court is probably going to do what I
14 was going to ask, so --

15 THE COURT: All right, sir.

16 Ladies and gentlemen, the transcripts are going to be
17 handed out for your use in following the audible statements
18 on the tape recording. However, the transcripts are not to
19 be considered by you as evidence. They are not evidence.
20 They are simply aids to help you in following what is
21 actually on the tape.

22 Is that satisfactory?

23 MR. MEARS: (Nods head affirmatively)

24 MR. HARDY: Have we given Mr. Mears one already? I
25 think this is the one in evidence, Judge, if we could give

1 it to the Court. Give Mr. Court Reporter one. If we could
2 pass these out, please, Your Honor.

3 (Whereupon transcripts are tendered to the jury)

4 MR. MEARS: Your Honor, the tape is being played for
5 the jury for a specific purpose based upon our previous,
6 the Court's previous rulings in this matter. It's my
7 understanding that the tape is not being admitted into
8 evidence for any other purpose. Am I correct in that
9 assumption?

10 MR. HARDY: Under Gibbons, Gibbons, Your Honor.

11 MR. MEARS: That's what I'm referring to, Judge. It's,
12 it's not being admitted for the purposes of taking it out
13 with the jury and listening to it. It's simply being played
14 to the jury based upon the representations that was made by
15 the Prosecutor earlier, as to the reason for having to play
16 it.

17 MR. HARDY: Your Honor, it's offered under Gibbons. We
18 know the law is they can't take the tape recorder out and
19 play it in the jury room, nor can they take the transcript
20 out and read it. That's already been held by the courts
21 that we can't do that. But they can look at it at this time
22 and then we'll take them back up and hold them, Your Honor.
23 I think that's the law.

24 THE COURT: Mr. Mears, that -- I'm not exactly sure
25 what you're, what you're driving at. It's being --

1 MR. MEARS: I'm referring to the tape --

2 THE COURT: -- offered for --

3 MR. MEARS: I'm sorry, Judge.

4 THE COURT: I think we're all, we are aware of the
5 purpose it's being offered for and the Court will give
6 appropriate instructions in regards to that at the
7 appropriate time.

8 Was your concern in regards --

9 MR. MEARS: We're contending it's not being offered
10 to go out with the jury --

11 THE COURT: Oh, no, sir.

12 MR. MEARS: -- as an item of evidence, --

13 THE COURT: No, sir.

14 MR. MEARS: -- is what I'm clarifying.

15 THE COURT: Yes, sir.

16 MR. MEARS: Okay.

17 (Whereupon State's Exhibit Number 28 is played to the
18 jury as follows)

19 "MR. WEAVER: Today's date is 4-13-94. We're at the
20 jail justice center. Present is myself, Det. Sgt. Chuck
21 Weaver, and Lt. Melvin Johnson, and Gary Lamar Young. The
22 time is 1415 hours. We're talking about the robbery and
23 shooting at the Madison Street Deli and the homicide and
24 robbery at the Junior Food Store.

25 Speak up real clear and talk in that. I want to show

1 you this rights form that you signed here, that you're
2 willing to talk with us. Did you, is it your signature?

3 MR. YOUNG: Yes, sir.

4 MR. WEAVER: And you're willing to talk to us now about
5 these things?

6 MR. YOUNG: Yes, sir.

7 MR. WEAVER: Has anybody threatened you or promised you
8 anything?

9 MR. YOUNG: No.

10 MR. WEAVER: And you're willing to talk to us?

11 MR. YOUNG: Yes, sir.

12 MR. WEAVER: Without an attorney present?

13 MR. YOUNG: Yes, sir.

14 MR. WEAVER: Okay. Go ahead. And you were telling Lt.
15 Johnson and myself about how you know who, uh, did the
16 robbery and shooting at the Madison Street Deli.

17 MR. YOUNG: He had told me, Jeff had told me, you know,
18 that they had, they he went and did it. Went in, went in
19 and a tall man, tall man with glasses, I think dropped the
20 dishes and stuff and he shot him in the head.

21 MR. WEAVER: Okay. You said he was washing the dishes?

22 MR. YOUNG: That's what somebody said. He was back in
23 the back with a pot, you know.

24 MR. WEAVER: And he shot him in the head?

25 MR. YOUNG: Shot him in the head.

1 MR. WEAVER: Okay. When did he tell you this?
2 MR. YOUNG: The same night.
3 MR. WEAVER: Okay. Where were ya'll at when he told
4 you?
5 MR. YOUNG: I, I was at my girl's house.
6 MR. WEAVER: Where is that?
7 MR. YOUNG: Where ya'll got me out of the room.
8 MR. WEAVER: At Cherokee Projects right over here?
9 MR. YOUNG: Yeah, Cherokee.
10 MR. WEAVER: What's the number of that? Do you
11 remember the number of it?
12 MR. YOUNG: I don't know the number.
13 MR. WEAVER: What's your girlfriend's name?
14 MR. YOUNG: Tina.
15 MR. WEAVER: Okay. When Jeff told you that, who all
16 was there?
17 MR. YOUNG: Nobody but just me and him.
18 MR. WEAVER: Where were ya'll at?
19 MR. YOUNG: Talking at the door.
20 MR. WEAVER: Were you out, standing outside the
21 apartment?
22 MR. YOUNG: Yes, sir.
23 MR. WEAVER: This is Tina's apartment?
24 MR. YOUNG: Yes, sir.
25 MR. WEAVER: Okay.

1 LT. JOHNSON: Let me interrupt you a minute. Uh, Gary,
2 tell me in your words what he said to you about the robbery?
3 Just tell me everything you can remember, what he told you?

4 MR. YOUNG: He say, he say he had started, you know, to
5 timing the stop lights and stuff, walk around the store, and
6 then he went in. The man was back there washing the dishes
7 or something, a tall man. And he say he walked up to him
8 and bapped him in the head with the gun, shot him in the
9 head. And he went to the cash register and he didn't know
10 how to open it. He said he just had to give up, he had to
11 leave. He just left it, you know what I'm saying?

12 MR. WEAVER: Did he take anything from the store?

13 MR. YOUNG: He didn't take nothing from the store, not
14 that I know of. He didn't tell me that. He said he tried
15 but the cash register wouldn't open.

16 MR. WEAVER: He said it wouldn't open?

17 MR. YOUNG: It wouldn't open. He didn't know how to
18 open it, you know what I'm saying.

19 MR. WEAVER: How did he get to the store?

20 MR. YOUNG: On foot.

21 MR. WEAVER: Okay. How did he leave the store?

22 MR. YOUNG: On foot.

23 MR. WEAVER: Anybody pick him up?

24 MR. YOUNG: No, sir.

25 MR. WEAVER: What did he have on when he went to the

1 store? Do you remember?

2 MR. YOUNG: A hooded, a sock, a black, a black sock,
3 had hooded skull cap.

4 MR. WEAVER: And what else?

5 MR. YOUNG: And, uh, green hooded, you know, you know,
6 you know what I'm talking about? A little thing like that.

7 MR. WEAVER: And that was before he went to the store?

8 MR. YOUNG: Yes, sir.

9 MR. WEAVER: Okay.

10 LT. JOHNSON: Now, back up again. Now, describe this,
11 this green thing he had on.

12 MR. YOUNG: It was one of them jogging, jogging, uh,
13 piece, with a hood on, you know what I'm talking about.

14 LT. JOHNSON: Uh-hum.

15 MR. YOUNG: One of them jogging, jogging sweatshirts.

16 LT. JOHNSON: A jogging sweatshirt with a hood on it?

17 MR. YOUNG: Yes, sir.

18 LT. JOHNSON: That's what he had on?

19 MR. YOUNG: Yes, sir.

20 LT. JOHNSON: And what color was it?

21 MR. YOUNG: Green. And a black sock hat.

22 MR. WEAVER: A black sock hat --

23 MR. YOUNG: A skull cap.

24 LT. JOHNSON: Okay. Where did he go when he left, uh,
25 the store?

1 MR. YOUNG: I guess he had came back out there. It was
2 late that night. It was late. It was before the store
3 closed.

4 MR. WEAVER: He came back to where you were?

5 MR. YOUNG: Yes, sir. He came and -- He was staying
6 with my sister. He stayed with my sister. Where ya'll had
7 got him the first time, where ya'll went the first time.

8 MR. WEAVER: Over here at Cherokee Park Projects?

9 MR. YOUNG: Yeah.

10 MR. WEAVER: Over here behind the jail justice center
11 here?

12 MR. YOUNG: Yes, sir. Right over there.

13 MR. WEAVER: And that's where he was staying?

14 MR. YOUNG: Yes. He was staying with my sister, my
15 sister.

16 MR. WEAVER: Okay. But when did you see him
17 afterwards?

18 MR. YOUNG: I seen him when he came back from the
19 thing.

20 MR. WEAVER: Okay.

21 MR. YOUNG: He came to my, he came over to my girl's
22 house.

23 MR. WEAVER: Tina's?

24 MR. YOUNG: Yes, sir.

25 MR. WEAVER: Okay. And what did he have on then?

1 MR. YOUNG: He ain't had it on then. He say he had to
2 get rid of it.

3 LT. JOHNSON: What did he have on when you saw him?

4 MR. YOUNG: A shirt. I think it was a shirt. You know
5 what I'm saying, it was a shirt. Think it was black. I
6 think it was black. He say he had to get rid of, uh, that,
7 uh, jogging shirt, sweatshirt.

8 LT. JOHNSON: Did he tell you where he got rid of it
9 at?

10 MR. YOUNG: No. He say he throwed it out, throwed it
11 somewhere. He didn't tell, he didn't tell me that.

12 LT. JOHNSON: What did he do with the gun?

13 MR. YOUNG: Sir?

14 LT. JOHNSON: Did he have the gun?

15 MR. YOUNG: Yes, sir. He had the gun.

16 LT. JOHNSON: Okay. When you talked with him the night
17 right after the robbery, he had the gun with him then?

18 MR. YOUNG: Yes, sir.

19 LT. JOHNSON: Did you see it?

20 MR. YOUNG: Yes, sir.

21 LT. JOHNSON: Okay. Now, go over it one more time and
22 take your time and explain. Now, don't talk too fast. Tell
23 us what he told you what he did and how he walked in the
24 store. Now, just one more time. Just tell me that one more
25 time.

1 MR. YOUNG: He say he wait and he timed the red light,
2 and wait till it go green. Check see how long it wait, you
3 know, be green the last time. Know about how long. Went in
4 and, uh, and he said the man was back there washing dishes,
5 or doing something. It was a tall man. He said when he
6 turned around, when the man turned around he shot him in the
7 head. And he went to the cash register. And I guess that
8 man was crawling or something, trying to get up. He said,
9 get down, like that there and then he come over trying to
10 open up the cash register and he said it would never open.
11 So he say he didn't have time so he had to leave. Then he
12 said he got rid of the, uh, sweatshirt and the, uh, skull
13 cap.

14 MR. WEAVER: Okay. And so you saw him before it and he
15 told you about it?

16 MR. YOUNG: Yes, sir.

17 MR. WEAVER: And you saw the gun before it?

18 MR. YOUNG: Yes, sir.

19 MR. WEAVER: Okay. Describe the gun again?

20 MR. YOUNG: A .25, silver.

21 MR. WEAVER: Okay. Do you remember the name of the
22 gun?

23 MR. YOUNG: A .25.

24 MR. WEAVER: I know. Do you remember another name, a
25 brand name or anything?

1 MR. YOUNG: What you talking about? Like, uh, --

2 MR. WEAVER: Like, uh, type, Smith, whatever type. Do
3 you know what type it was? Do you know?

4 MR. YOUNG: I, I don't know what type.

5 MR. WEAVER: All right. And then you saw him
6 afterwards and he didn't have the sweatshirt on?

7 MR. YOUNG: Nope.

8 MR. WEAVER: Okay. All right. Let's go on froward now
9 to, uh, -- Do you know what night this was, about?

10 MR. YOUNG: No. It was -- I think it was last week or
11 -- No. I don't know. I don't know what day it happened.

12 MR. WEAVER: All right. Now, about the Junior Food
13 Store. Tell me about that?

14 MR. YOUNG: You know, he did it again.

15 MR. WEAVER: Okay. Start from the first. How do you
16 know he did it? Who is he you're talking about?

17 MR. YOUNG: Jeff.

18 MR. WEAVER: Okay. What's Jeff's last name?

19 MR. YOUNG: Cromartie.

20 MR. WEAVER: Cromartie. Okay. How do you know about
21 the Junior Food Store?

22 MR. YOUNG: He told me.

23 MR. WEAVER: All right. Where were you at when he told
24 you?

25 MR. YOUNG: I was out there in Cherokee.

1 MR. WEAVER: (unintelligible)
2 MR. YOUNG: Yes, sir.
3 MR. WEAVER: Your girlfriend's?
4 MR. YOUNG: Yes, sir.
5 MR. WEAVER: Tina's?
6 MR. YOUNG: Yes, sir.
7 MR. WEAVER: Okay. Who else was there when he told you
8 about it?
9 MR. YOUNG: Nobody. He didn't tell me
10 (unintelligible). And then he say he was gonna hit the
11 Junior Food Store. So he went out there. Said he was going
12 way on out there like going towards Tallahassee.
13 MR. WEAVER: Okay. About what time was it?
14 MR. YOUNG: Well, I'll tell you what (unintelligible)
15 like this right here. I was, I was asleep when they came
16 back.
17 LT. JOHNSON: When you say, they, who, who --
18 MR. YOUNG: Him and another dude.
19 LT. JOHNSON: Who was the other dude?
20 MR. YOUNG: He say he had another dude with him.
21 LT. JOHNSON: Who was the dude?
22 MR. YOUNG: I don't know the other dude.
23 LT. JOHNSON: Okay.
24 MR. YOUNG: He didn't told me. I say, you hit it by
25 yourself this time. He say, naw, I had another dude, like

1 that right there. He ain't never tell me who it was.

2 LT. JOHNSON: What did he tell you happened at the
3 Junior Food Store?

4 MR. YOUNG: He walked in. He went down the bubble gum
5 aisle. He came back. The man was sitting in a chair with
6 some glasses on. Shot him in the glass. Shot him through
7 the eye, you know, glasses. Shot him through the glasses.
8 And he shot him again. (Unintelligible) and he tried to
9 open up that cash register, but that one wouldn't open. He
10 say he didn't know how to open the cash register. You know,
11 he asked me did I know how to open a cash register. I say,
12 no, I ain't going -- I'm through with all that there. I'm
13 through with all that. I ain't, you know (unintelligible)
14 clean. I ain't with that no more, you know.

15 (Unintelligible) what I'm saying. They be knocking on the
16 door, you know what I'm saying, and she say, who that
17 knocking on that door.

18 LT. JOHNSON: Okay. Let's back up a little bit. You
19 said, now, that he said he walked in, walked down the bubble
20 gum aisle?

21 MR. YOUNG: Um-hum.

22 LT. JOHNSON: Then he walked back over to the counter.
23 The man was sitting in the chair. He shot the man through
24 the eye.

25 MR. YOUNG: Through the glass.

1 LT. JOHNSON: Through the glass.

2 MR. YOUNG: Um-hum. And then he shot him again.

3 LT. JOHNSON: And then he shot him again. Then he
4 tried to open the register, you said, and he couldn't get
5 that open?

6 MR. YOUNG: Couldn't get it open.

7 LT. JOHNSON: Okay. What did he do next?

8 MR. YOUNG: He said he left.

9 LT. JOHNSON: Okay. When he talked to you, did you see
10 -- did he have anything else with him when he told you about
11 this?

12 MR. YOUNG: No, sir. He didn't tell me -- he didn't
13 have nothing else. He didn't show me nothing else.

14 LT. JOHNSON: You didn't see no beer?

15 MR. YOUNG: No, sir.

16 LT. JOHNSON: He didn't have no beer with him when he
17 told you about this?

18 MR. YOUNG: No, sir. I don't know who the other dude
19 was he say he was with. I don't know who that one was.

20 LT. JOHNSON: Did you ever see the other dude?

21 MR. YOUNG: No, sir. Like I say, I was still up in the
22 bed. He knocked on the door, knocked on the door, 'cause he
23 was staying at my sister's and she put him out. That it
24 right there.

25 LT. JOHNSON: Okay. What you're saying now is that, he

1 came, after this robbery of Junior Food, he came to your
2 house or to your sister's house --

3 MR. YOUNG: No. See, he was staying at my sister's for
4 a while, you know, just staying the night, you know what I'm
5 saying, like that right there. I was staying at
6 (unintelligible) house.

7 LT. JOHNSON: Okay.

8 MR. YOUNG: And he came knocking on the door. It was
9 late, you know. She say, who that keep knocking on the
10 door. Go on and see who's knocking. Damn. Dog. Damn. I
11 can't get the cash register open, like that right there.

12 LT. JOHNSON: That's what he told you?

13 MR. YOUNG: Yes, sir.

14 LT. JOHNSON: That he couldn't get the cash register
15 open?

16 MR. YOUNG: Yes, sir. He told me how he shot the man
17 too.

18 LT. JOHNSON: Um-hum.

19 MR. YOUNG: Like that right there.

20 MR. WEAVER: Did you see the gun?

21 MR. YOUNG: Yes, sir.

22 MR. WEAVER: What kind of gun was it?

23 MR. YOUNG: .25.

24 MR. WEAVER: Was it the same gun that was used, that
25 you saw when you were talking about the Madison Street Deli?

1 Same gun?

2 MR. YOUNG: Yes, sir.

3 MR. WEAVER: Silver?

4 MR. YOUNG: Yes, sir.

5 MR. WEAVER: Okay. What, what about the handles?

6 MR. YOUNG: Wooden handle.

7 MR. WEAVER: Okay. Did you ever see any shells? Did
8 he ever show you any shell casings or bullets?

9 MR. YOUNG: No. They're .25 bullets.

10 MR. WEAVER: Okay.

11 MR. YOUNG: .25 bullets.

12 LT. JOHNSON: Where did he keep any bullets at?

13 MR. YOUNG: He get them from people.

14 LT. JOHNSON: Oh. Just get them from different people?

15 MR. WEAVER: Do you know who he got them from?

16 MR. YOUNG: No, sir.

17 LT. JOHNSON: Do you know -- Go ahead.

18 MR. YOUNG: He just be getting 'em, you know what I'm
19 saying. (Unintelligible) like that right there, .25 bullet.

20 MR. WEAVER: Do you know where he get, got the gun
21 from?

22 MR. YOUNG: No, sir.

23 LT. JOHNSON: How long has your cousin had that gun?

24 MR. YOUNG: Had it a long time. Since he's been down
25 here.

1 LT. JOHNSON: Since he's been down here, you said.

2 Where, where has he been?

3 MR. YOUNG: Been up north, Pennsylvania, Philadelphia.

4 LT. JOHNSON: Philadelphia? Philadelphia? How long,
5 how long has he been back here?

6 MR. YOUNG: Um, three weeks, close to three or four
7 weeks.

8 LT. JOHNSON: Okay. Let me ask you one more time.
9 When you saw him after the Junior Food Robbery, did he bring
10 some, some beer with him to drink?

11 MR. YOUNG: No, sir.

12 LT. JOHNSON: And you're sure he didn't give you no
13 beer?

14 MR. YOUNG: No.

15 MR. WEAVER: Okay. What did you do after ya'll got
16 through talking?

17 MR. YOUNG: I went back upstairs.

18 MR. WEAVER: And did what?

19 MR. YOUNG: Got back in the bed.

20 MR. WEAVER: You went back to sleep?

21 MR. YOUNG: Yes, sir.

22 MR. WEAVER: Who all was there when he came back and
23 started talking about shooting the guy at the Junior Store?

24 MR. YOUNG: Nobody. He just told me 'cause, you know,
25 (unintelligible).

1 MR. WEAVER: Was your girlfriend there?

2 MR. YOUNG: No. She was up in the bed asleep.

3 MR. WEAVER: That's what I mean. Who was there in that
4 apartment?

5 MR. YOUNG: Uh, her and her other two little kids.

6 MR. WEAVER: Anybody else?

7 MR. YOUNG: No, sir. Her and the two little kids.
8 That was it.

9 MR. WEAVER: Did some other people come later?

10 MR. YOUNG: No; 'cause it was late. It was, like, the
11 morning time, you know.

12 MR. WEAVER: What time in the morning would you say?

13 MR. YOUNG: I know it was after, it was after 1:00 in
14 the morning. After 1:00 in the morning.

15 MR. WEAVER: Could it have even been later?

16 MR. YOUNG: Some time like that, but I know it was
17 after 1:00. After way, it was after 1:00. After that, you
18 know.

19 LT. JOHNSON: So, let me ask you this then. After he
20 got through talking with you, do you know where he went?

21 MR. YOUNG: I guess he went over to my sister's house,
22 my sister's house.

23 LT. JOHNSON: Is that where he spent the night
24 supposedly? At your sister's house?

25 MR. YOUNG: Yes, sir. She be in town and come in late,

1 late in the morning.

2 LT. JOHNSON: Okay. Where's your sister stay at?

3 MR. YOUNG: In Cherokee. That third house, the house
4 ya'll go.

5 MR. WEAVER: The first house we went to a while ago?

6 MR. YOUNG: Same one ya'll came and got me.

7 MR. WEAVER: Okay.

8 MR. YOUNG: You know that, over that same, you know.

9 MR. WEAVER: And what is her name again?

10 MR. YOUNG: Lisa.

11 MR. WEAVER: What's her last name?

12 MR. YOUNG: Young. But she married. I don't know her
13 -- I done forgot his name.

14 LT. JOHNSON: Okay. Let me ask you this then. You
15 know, uh, Thad Lucas? What did he know about all this?

16 MR. YOUNG: That's Thad's, uh, brother.

17 LT. JOHNSON: This is -- Cromartie's Thad's brother?

18 MR. WEAVER: Jeff Cromartie is Thad's brother?

19 MR. YOUNG: Yes, sir.

20 LT. JOHNSON: Okay. What do Thaddeus know about all
21 this?

22 MR. YOUNG: About, you know, Thad, Thad know -- Thad
23 know but he don't know (unintelligible). Thad
24 (unintelligible). Thad was around here talking about it.
25 Thad didn't know that he did it till he found out -- Thad

1 know he robbed the store but he didn't know that he killed
2 the man, killed the people until, uh, he saw it in the paper
3 and on the news. He did it for real, didn't he? He did it
4 for real, like that.

5 LT. JOHNSON: What did he say?

6 MR. YOUNG: He didn't say nothing, you know. He, --

7 LT. JOHNSON: Do anybody besides Jeff know who this
8 other guy he was with?

9 MR. YOUNG: The other dude. I don't know. Cause, like
10 I say, he left, he left there by hisself. Then he came
11 back.

12 LT. JOHNSON: Is there anybody Jeff's been hanging out
13 with that's got a car?

14 MR. YOUNG: No, sir. He mostly be over -- he be in
15 Cherokee. He walk back here. Well, he know people around
16 here though. He know people around here. But he walked, we
17 walked from here.

18 MR. WEAVER: All right. Let me ask you this. He came
19 back over there. You were at Tina's asleep. Is that right?

20 MR. YOUNG: Yes, sir.

21 MR. WEAVER: And that -- and he came inside and he told
22 you about it?

23 MR. YOUNG: No. I stepped out.

24 MR. WEAVER: You stepped outside?

25 MR. YOUNG: Yes, sir.

1 MR. WEAVER: Okay. Did he ever come inside?

2 MR. YOUNG: No, sir. Not that night there.

3 MR. WEAVER: All right. Then when he stepped
4 outside --

5 MR. WEAVER: Make a note we stopped the tape at 1435
6 hours.

7 Okay. We'll start back again. Uh, and he was outside?

8 MR. YOUNG: Yes, sir.

9 MR. WEAVER: Like you said, he was standing outside.
10 All right. Where did he go from there?

11 MR. YOUNG: The time he left there?

12 MR. WEAVER: Yeah, yeah. Where did he go?

13 MR. YOUNG: To my sister's house.

14 MR. WEAVER: To your sister's, which is right across --

15 MR. YOUNG: Yeah.

16 MR. WEAVER: You can see it from --

17 MR. YOUNG: From out my window -- from out her window.

18 (Unintelligible) my sister's house.

19 MR. WEAVER: Okay. And where did you go from there?

20 MR. YOUNG: I went back upstairs.

21 MR. WEAVER: Okay. Did you see the gun at that time?

22 MR. YOUNG: Yes, sir.

23 MR. WEAVER: When, when you went out there and talked
24 to him, he showed you the gun?

25 MR. YOUNG: Yes, sir.

1 MR. WEAVER: Okay. Now, I want to move forward just a
2 little bit. That same gun was used in the incident last
3 night. Involved in the incident over at Cherokee projects.

4 MR. YOUNG: Yes, sir.

5 MR. WEAVER: Okay. Now, that gun was thrown. Are you
6 the one that threw that gun?

7 MR. YOUNG: Yes, sir. 'Cause I didn't, you know -- I'm
8 gonna tell straight up like this here. He was gonna hit
9 that one up there too, you know what I'm saying, and then --

10 MR. WEAVER: When you say, he's going to hit that one
11 up there too, what are you talking about?

12 MR. YOUNG: The Suwannee Swifty store.

13 MR. WEAVER: The Suwannee Swifty store?

14 LT. JOHNSON: Up where now? Where? You said up there?

15 MR. YOUNG: Up there on 84.

16 MR. WEAVER: On 84?

17 LT. JOHNSON: Okay.

18 MR. WEAVER: Okay. Did he talk about that one? When
19 did he talk about that one?

20 MR. YOUNG: Yesterday. Then, then I had seen the gun
21 and I got it.

22 MR. WEAVER: All right. How did you end up with the
23 gun last night?

24 MR. YOUNG: 'Cause he had laid it down on the table. I
25 had threw it. I threw it over yonder.

1 MR. WEAVER: Okay.

2 MR. YOUNG: I was looking at ya'll and, man, I was
3 saying, I hope they find that gun, I hope they find that
4 gun, I hope they find it. 'Cause I seen a whole lot of
5 police down there in and around down there. And I say, I
6 hope they find that gun.

7 MR. WEAVER: Who fired the gun last night?

8 MR. YOUNG: Me.

9 MR. WEAVER: You're the one that fired it?

10 MR. YOUNG: Shot it in the air.

11 MR. WEAVER: Shot it in the air.

12 MR. YOUNG: 'Cause he had no more bullets after that.
13 He had no more bullets.

14 MR. WEAVER: Okay. What did he say about the bullets?
15 Has he said anything about the bullets to you?

16 MR. YOUNG: Well, he asked me why I shot up, why I shot
17 the bullets.

18 MR. WEAVER: He asked you that last night?

19 MR. YOUNG: And why I threw the gun.

20 LT. JOHNSON: What did you tell him?

21 MR. YOUNG: I said, man, I throwed the gun, man. You
22 know, you already in trouble, man, you know.

23 MR. WEAVER: But that is his gun? That's Jeff's gun?

24 MR. YOUNG: I don't know whose gun it is. I guess it
25 is.

1 MR. WEAVER: Is that the same gun you seen him, you're
2 talking about these other two?

3 MR. YOUNG: With the wooden handles on it.

4 MR. WEAVER: Yeah.

5 MR. YOUNG: Silver.

6 MR. WEAVER: Is that the same gun that's over at the --

7 MR. YOUNG: At the BP store.

8 MR. WEAVER: Madison Street --

9 MR. YOUNG: Madison Street or (unintelligible).

10 MR. WEAVER: -- Deli?

11 MR. YOUNG: Yes, sir. And Junior Food Store.

12 MR. WEAVER: Okay. And, let me back up again. This
13 other guy, when he came back, you're saying we. You're
14 talking about we, talking about another guy that was with
15 him.

16 MR. YOUNG: Yeah.

17 MR. WEAVER: Okay. And you've never seen this other
18 guy that was with him?

19 MR. YOUNG: Never seen him with him.

20 MR. WEAVER: But he told you there was another guy with
21 him?

22 MR. YOUNG: Yes, sir. Like I say, if I seen him I
23 ain't know he -- I probably ain't know the guy was here.
24 You know what I'm talking about. But he ain't no, 'cause he
25 always be by hisself when he come over there.

1 MR. WEAVER: And Jeff is your cousin?

2 MR. YOUNG: Yes, sir.

3 MR. WEAVER: And he's been in Thomasville how long?

4 MR. YOUNG: About three weeks, four weeks, ever since
5 March. Sometime in the end of March, between the second and
6 third week in March.

7 MR. WEAVER: Does he have a girlfriend?

8 MR. YOUNG: Not that I know. Well, yeah,
9 (unintelligible).

10 LT. JOHNSON: Okay. Let me ask you this. What was the
11 shooting about all last night in the incident? What
12 happened last night?

13 MR. YOUNG: They was talking about West Side stuff.

14 LT. JOHNSON: Huh?

15 MR. YOUNG: Them boys talking about West Side.

16 LT. JOHNSON: Some West Side stuff.

17 MR. YOUNG: West Side.

18 LT. JOHNSON: What's that?

19 MR. YOUNG: They talking gang. West Side, South Side.
20 Some gangs. And one of 'em called the West Side. One over
21 there by the old jailhouse.

22 LT. JOHNSON: Um-hum.

23 MR. YOUNG: And this is South Side over here.

24 LT. JOHNSON: Okay. And what happened?

25 MR. YOUNG: Dude, dude came and just started shooting,

1 talking about West Side. I was peeping out the window. I
2 was steady peeping out the window right here. And I heard
3 'em hollering (unintelligible). (Unintelligible) peeping
4 out the window and I hear West Side, West Side, West Side,
5 mother fucker; West Side. Boom. Boom. Shot all in
6 (unintelligible).

7 LT. JOHNSON: Shot who in (unintelligible).

8 MR. YOUNG: (Unintelligible)

9 LT. JOHNSON: Shot whose window out? (Unintelligible)
10 a window out of an apartment?

11 MR. YOUNG: Yeah. They shot at, you know,
12 (unintelligible).

13 LT. JOHNSON: Um-hum.

14 MR. WEAVER: And this shooting, this was last night?
15 That's what --

16 MR. YOUNG: Yes, sir.

17 MR. WEAVER: And that's what, that's what led you to
18 throw this gun out there?

19 MR. YOUNG: Yes, sir.

20 MR. WEAVER: Okay.

21 MR. YOUNG: If I didn't did it he'd be gone
22 (unintelligible). He's been left last night. But he ain't
23 go no more bullets.

24 MR. WEAVER: You're saying if you hadn't done it, he'd
25 have left last night?

1 MR. YOUNG: Um-hum.

2 MR. WEAVER: Did he say anything about going looking
3 for that gun today?

4 MR. YOUNG: I don't hear him say. He just kept saying,
5 why you threw the gun away? Why you shot my bullets? He
6 say, you get the gun from the house, man, like that right
7 there. So I just chunked it (unintelligible). I seen a
8 whole lot of polices (unintelligible).

9 MR. WEAVER: Did he say, talk about the Madison Street
10 Deli, the first one, on that, where he went in and shot the
11 clerk, the tall clerk that was washing dishes? Did, uh, he
12 say anybody was with him on that one?

13 MR. YOUNG: No, sir. He say he did that one by
14 hisself. He said he timed the light. You know what I'm
15 saying, he say he timed the light, timed the stop light, and
16 it go green. That keep the cars, you know, from stopping
17 and starting (unintelligible).

18 MR. WEAVER: But on the Junior Store he said there was
19 somebody with him. All right. Tell me about the Junior
20 Store again one more time? What did he tell you about what
21 happened?

22 MR. YOUNG: He say he went in, said he went in, like
23 that there. He went down the bubble gum aisle, turned
24 around, turned around and the man was sitting in the chair.
25 He shot the glasses. Shot him somewhere in the head. Say

1 he shot two times. When he shot him the first time his
2 glasses been going right through here. So he shot him
3 again, like that right there. Then he kept trying to get
4 the cash register open, but it wouldn't never open.

5 MR. WEAVER: Did he say he went behind the counter?

6 MR. YOUNG: Behind the counter?

7 MR. WEAVER: Yeah. Did he say he actually got behind
8 the counter himself?

9 MR. YOUNG: The other dude.

10 MR. WEAVER: The other dude. Okay. But --

11 MR. YOUNG: He, he was in front of the counter and the
12 other dude went to the cash register.

13 MR. WEAVER: Did they say they took anything at all
14 from the store?

15 MR. YOUNG: They ain't tell me. He told me -- he came
16 back by hisself over there, you know what I'm saying, and
17 knocked on the door. Came down and she say, who that keep
18 knocking on the door, like that right there.

19 MR. WEAVER: Lt. Johnson, can you think of anything
20 else at this time?

21 LT. JOHNSON: Not at this time.

22 MR. WEAVER: All right. I want to ask you for the
23 record here, did you have anything at all to do with the,
24 either one of these shootings at Madison Street or the
25 Junior Store --

1 MR. YOUNG: No.

2 MR. WEAVER: -- other than knowing about it? You
3 weren't at either one?

4 MR. YOUNG: I wasn't at nary one of them. I wasn't at
5 nary one of them (unintelligible). I was nowhere around. I
6 wasn't on (unintelligible), you know. I was
7 (unintelligible). I was at Cherokee.

8 MR. WEAVER: Okay. Is everything you've told myself
9 and Lt. Johnson about that Madison Street and about the
10 Junior Store and about the shooting last night, which was --
11 What time was it when you threw that gun away?

12 MR. YOUNG: All right. The police (unintelligible)
13 car, before he came around there (unintelligible) I threw it
14 over yonder.

15 MR. WEAVER: Okay.

16 MR. YOUNG: I threw it over yonder. Say, why you throw
17 it over there, why you throw it over there?

18 MR. WEAVER: Is that the only time you've ever fired
19 that gun?

20 MR. YOUNG: Yes, sir. That's the only time I ever
21 fired it.

22 MR. WEAVER: Okay.

23 MR. YOUNG: I ain't had nothing to do with it. I ain't
24 gonna go and get locked up. I don't want to get locked up
25 no time for nothing I didn't do.

1 MR. WEAVER: Okay.

2 MR. YOUNG: And, --

3 MR. WEAVER: Has he told you not to tell us anything?
4 Has your cousin Jeff told, asked you to say, not say
5 anything to the police? Or have ya'll talked about it or
6 anything this morning?

7 MR. YOUNG: No; we ain't talk about it. We ain't talk
8 about it this morning.

9 MR. WEAVER: You didn't?

10 MR. YOUNG: No. (Unintelligible) I ain't gonna tell
11 you nothing 'cause I done been locked up before.
12 (Unintelligible) you know what I'm saying. I'm through with
13 that there (unintelligible). It's been a long time, '89,
14 and I been in and out of jail, in and out. No more, I don't
15 want no more. I got some (unintelligible). I'm through
16 with that.

17 MR. WEAVER: So everything you're telling myself and
18 Lt. Johnson is the truth to the best of your -- that you can
19 remember and the best of your knowledge?

20 MR. YOUNG: Yes, sir. Everything he told me, I'm
21 telling ya'll. Everything.

22 MR. WEAVER: Okay. The time now is 1445 hours, 4-13-
23 94. At this time this ends the interview.

24 MR. WEAVER: Today's date is 4-13-94. We've restarted
25 the interview that we were doing just a few minutes ago to

1 talk about another subject. At this time, the same people
2 present, Lt. Johnson, myself, Chuck Weaver and Gary Lamar
3 Young.

4 Okay. Gary, I want to ask you about this third person
5 we talked about earlier that was, that you might know
6 something about that was at the Junior Store the night of
7 the shooting and robbery, the night the man was shot twice
8 that you were talking about, the night that man was
9 murdered, and they attempted to get in the cash register.
10 Tell us what you know about this guy Corey?

11 MR. YOUNG: He was the one trying to open up the cash
12 register.

13 MR. WEAVER: Corey was trying to open the cash
14 register. Okay. What is Corey's last name?

15 MR. YOUNG: I don't know his last name.

16 MR. WEAVER: You don't know his last name?

17 MR. YOUNG: No, sir.

18 MR. WEAVER: Where does Corey live?

19 MR. YOUNG: He be out there in Cherokee, with Tonya
20 (unintelligible) girl's house. That (unintelligible) came
21 here with Thad.

22 MR. WEAVER: The one that came in with Thad?

23 MR. YOUNG: Right.

24 MR. WEAVER: And Corey was the one trying to open the
25 cash register? Who told you this?

1 MR. YOUNG: He did.

2 MR. WEAVER: Corey did. All right. Now, let's back up
3 again. When you were -- When Jeff came, you're talking
4 about Jeff coming to talk to you, was Corey with him then
5 too?

6 MR. YOUNG: Yes, sir.

7 MR. WEAVER: Okay. They were together?

8 MR. YOUNG: Yes, sir.

9 MR. WEAVER: Did they ever come in?

10 MR. YOUNG: No, sir.

11 MR. WEAVER: Okay. What did they have with them?

12 MR. YOUNG: They had some beer.

13 MR. WEAVER: Okay.

14 LT. JOHNSON: What kind of beer?

15 MR. YOUNG: Budweiser.

16 LT. JOHNSON: How much beer?

17 MR. YOUNG: A case, I think. Two, two twelve packs.

18 MR. WEAVER: Two twelve packs? Okay. Did you drink
19 any of this beer?

20 MR. YOUNG: Yes, sir.

21 MR. WEAVER: Okay. Did that -- Who else was -- They,
22 they came on in the house, came on in the apartment?

23 MR. YOUNG: No, sir.

24 MR. WEAVER: Ya'll went somewhere else?

25 MR. YOUNG: Over to Tonya's house.

1 MR. WEAVER: Ya'll walked over to Tonya's house?

2 MR. YOUNG: Yes, sir.

3 MR. WEAVER: Okay. You, you were telling the truth
4 about they came there and then ya'll left Tina's -- You left
5 Tina's; right?

6 MR. YOUNG: Yes, sir.

7 MR. WEAVER: Your girlfriend's, and went to Tonya's?

8 MR. YOUNG: Yes, sir.

9 MR. WEAVER: Right across the apartments there --

10 MR. YOUNG: A lot of peoples (unintelligible).

11 MR. WEAVER: Name everybody over there, who was over
12 there?

13 MR. YOUNG: Tonya, Tonya, me, Jeff, Corey. I think
14 Thad was over there. Tonya's sister. There was another
15 girl. And then some more dudes had came up.

16 MR. WEAVER: You're saying Tonya, Corey, Jeff --

17 MR. YOUNG: I think Thad was over there.

18 MR. WEAVER: Thad?

19 MR. YOUNG: Tonya's sister. And another, another girl.
20 And then some more dudes had came up.

21 MR. WEAVER: Okay. What about, uh, you know the names
22 of anybody else that was there? Do you know anybody by the
23 name of Junior?

24 MR. YOUNG: Junior? I know, I know a Junior.

25 MR. WEAVER: What's his name?

1 MR. YOUNG: Oh, talking about Carnell.

2 MR. WEAVER: Carnell. Was he there?

3 MR. YOUNG: No, sir. Carnell wasn't there.

4 MR. WEAVER: How do you know Carnell?

5 MR. YOUNG: I know him by -- he stay in Boston.

6 MR. WEAVER: Okay. Did you see Carnell last night?

7 MR. YOUNG: Yes, sir.

8 MR. WEAVER: Was he involved in this shooting thing
9 last night, that gang type thing? You know what I'm talking
10 about?

11 MR. YOUNG: No, sir.

12 MR. WEAVER: Okay. But Carnell, you don't think
13 Carnell was there when they, when they came back with this
14 beer?

15 MR. YOUNG: No. Carnell wasn't there. He wasn't
16 there.

17 MR. WEAVER: Now, did Corey talk about the robbery to
18 you, separate from with Jeff? What did Corey say about the
19 shooting of this man?

20 MR. YOUNG: Corey said, the only thing, he turned
21 around, he had turned around, Corey said he was over by the
22 beer thing. He heard the first shot. Then he ran over
23 there. And he shot him again. He went up about, trying to
24 open the cash register.

25 MR. WEAVER: Okay. Corey was trying to open the cash

1 register. But when the shots were fired where was Corey?

2 MR. YOUNG: Back there by the beer thing.

3 MR. WEAVER: By the beer thing?

4 MR. YOUNG: And then while Corey was trying to open the
5 cash register, Jeff went and got the beer.

6 MR. WEAVER: Okay.

7 MR. YOUNG: And he said he dropped, he said he dropped
8 some out of the door.

9 MR. WEAVER: He said they dropped some out of the door?

10 MR. YOUNG: Dropped some cans or something.

11 LT. JOHNSON: What you mean, they dropped them out the
12 door?

13 MR. YOUNG: When they were running they dropped,
14 dropped, you know, dropped things. I think some beer had
15 came out. I don't know what they were saying.

16 LT. JOHNSON: Okay.

17 MR. WEAVER: Now, did Corey or Jeff tell you how they
18 got over to the Junior Store? Are you sure you don't know
19 how they got there?

20 MR. YOUNG: I don't know.

21 MR. WEAVER: Now, you know it's important. That's a
22 long ways from Cherokee projects --

23 MR. YOUNG: Yes, sir. I know the way out there.

24 MR. WEAVER: And it's all -- And it's important that
25 you tell us everything you know? I mean the truth.

1 MR. YOUNG: Yes, sir. I'm telling you the truth.

2 MR. WEAVER: You know, now, you've been -- sounds like
3 you're telling the truth, and you know, if you know how they
4 got there you need to tell myself and Lt. Johnson.

5 MR. YOUNG: I'm telling --

6 MR. WEAVER: If one of their girlfriends or somebody
7 took them over there, (unintelligible) we need to know how
8 they got there.

9 MR. YOUNG: I don't know. I don't know how they got
10 there. I'm telling you the truth. I don't know how they
11 got there. 'Cause, you know, they left here walking. I
12 don't know how they got there.

13 LT. JOHNSON: When you say they left here, what, him
14 and --

15 MR. YOUNG: Corey.

16 LT. JOHNSON: -- left together?

17 MR. WEAVER: Okay. Let me ask you this. Right before,
18 before they went did they talk about doing this to you,
19 about doing it? Did they ask you to go with them?

20 MR. YOUNG: Yes, sir.

21 MR. WEAVER: Did they ask you, did they say where they
22 were gonna go?

23 MR. YOUNG: Yeah.

24 MR. WEAVER: Did they say the Junior Store?

25 MR. YOUNG: Yes, sir.

1 MR. WEAVER: And what did you tell him?

2 MR. YOUNG: I say I ain't going.

3 MR. WEAVER: Was there anybody else there with you when
4 they started talking about it?

5 MR. YOUNG: No, sir.

6 MR. WEAVER: They ain't --

7 MR. YOUNG: I told them I wasn't going.

8 (Conclusion of tape recording)

9 MR. HARDY: Take up the transcripts.

10 (Whereupon Mr. Hardy retrieves the transcripts from
11 the jury)

12 MR. HARDY: We'll give them to the Clerk, Judge.

13 I think the Clerk doesn't want to -- wants us to keep
14 them, Judge. If there's no objection --

15 THE COURT: That's fine. I have Exhibit --

16 MR. HARDY: He's got the one that's into evidence, I
17 think.

18 THE COURT: Yes, sir. 169.

19 Do you have any more questions for this witness?

20 BY MR. HARDY:

21 Q Why did you stop the tape there, Weaver, toward the
22 end?

23 A The end of the interview?

24 Q Yes, sir.

25 A That was basically it.

1 Q No. I said, why did you stop it and then you started
2 talking about Corey Clark? Did you tell him what to say?

3 A No. No.

4 Q Well, what'd you do with that break there?

5 A There was some other detectives working on the case and
6 we received more information, more things to talk about.

7 Q Did you tell Young what to say?

8 A No, sir.

9 Q How to say it?

10 A No, sir.

11 Q I think Mr. Collins was the other man out at the Junior
12 Food Store?

13 A Agent Collins; yes.

14 Q He secured some of the evidence and I think he's the
15 one that took all the pictures?

16 A Yes.

17 Q Did you go back to the beer cooler area?

18 A Very briefly I did.

19 Q He would have been the man that made some charts and
20 some other photographs?

21 A Yes.

22 Q Both of those stores we were talking about, are they
23 both, the Junior Food Store and the Madison Street Deli, in
24 Thomas County, Georgia?

25 A They are in Thomas County, Georgia.

1 Q And the man deceased, what was his name?

2 A Richard Slys.

3 Q I think he was armed at the time he was killed?

4 A Yes; he was.

5 Q And did you see -- He had weapons?

6 A Yes; he did.

7 Q And he was the night clerk at the store?

8 A Yes; he was.

9 Q I think they're depicted in the photographs. He had a,
10 I think, a derringer on his side?

11 A Yes.

12 Q And then he had another one where?

13 A I believe in his pocket, one of his pockets.

14 Q Had either one been fired?

15 A It didn't, they didn't appear to be fired; no, sir.

16 Q Fully loaded?

17 A They were loaded.

18 Q Did you get them out or did Collins do that?

19 A We were both there. I believe Ken might have taken one
20 out.

21 Q I think the clothes -- you got clothes from each of the
22 four subjects in addition to the shoes?

23 A There were some clothes; yes.

24 Q And they were retrieved incident to arrest at the jail?

25 A Yes.

1 Q And you turned all them over to Ms. Everett?

2 A Yes.

3 MR. HARDY: He's with the Court.

4 COURT REPORTER: Your Honor, could we have a recess?

5 MR. MEARS: Your Honor, I expect my examination of
6 Det. Weaver will be somewhat lengthy.

7 THE COURT: All right. Why don't we take a recess at
8 this time.

9 Ladies and gentlemen, why don't we take about a ten to
10 fifteen minute recess before we start the cross examination.

11 Everyone please remain seated while the jury retires.

12 (Whereupon the jury retires from the courtroom)

13 THE COURT: We'll be in recess for about ten minutes.

14 (Whereupon the Court takes a brief recess, and upon
15 reconvening the following transpired outside the jury's
16 presence)

17 THE COURT: Mr. Mears, before we bring the jury in, in
18 regards to the Court's ruling yesterday concerning the
19 relevance of anything else on the Deli Street tape --

20 MR. MEARS: Yes, sir.

21 THE COURT: -- for that period of time that did not
22 show the actual incident, I just wanted to clarify that you
23 understand the Court's ruling was based upon the
24 information presented at that time. At that time all I
25 felt like there was, and I don't know that I feel like

1 there's anything different at this time, was that at most
2 there was a, be speculation, conjecture as to whether or not
3 someone else was involved in that particular matter, or was,
4 in fact, the perpetrator as opposed to the Defendant.

5 I'm assuming you understand that if you can at some
6 time present evidence to me otherwise, that I would
7 reconsider it.

8 MR. MEARS: Yes, Your Honor. And, and I would like
9 to do that either later this afternoon or the first thing --
10 I've got some evidence that I think is before the Court
11 already that may substantiate the need to show part of, at
12 least part of it, from Gary Young's testimony. But I need,
13 I need just time to put that together in a proper
14 presentation as to why I think it makes at least that
15 portion of the tape relevant.

16 THE COURT: Well, I don't know if there is or is not.
17 But I just wanted to make sure you understood the ruling
18 was based on what I, I had heard at the time.

19 MR. MEARS: I, I appreciate you telling me, Judge.
20 I thought you had ruled it all out as to not being relevant
21 after you had reviewed it yesterday.

22 THE COURT: Well, I had.

23 MR. MEARS: Then I'm correct then.

24 THE COURT: Based on, again, anything that we knew of
25 at that time. And I don't know that it's any different at

1 this time. But it'd be at best speculation or conjecture.

2 MR. MEARS: You're allowing me to come back to you if I
3 think I've got more --

4 THE COURT: If you have other evidence, or think, think
5 you have other evidence.

6 MR. HARDY: Judge, if he takes a long while with Mr.
7 Weaver, will he be the last witness today? I don't know if
8 he's going to take forty-five minutes or not. But --

9 THE COURT: Mr. Mitchell indicated to me in the hallway
10 that there was a particular witness that they, ya'll had to
11 provide an airline ticket from out of town that he would
12 like to put up today after Mr. Weaver.

13 MR. HARDY: Well, if we can, Judge. He may need the
14 rest. He has a little medical condition. I haven't seen
15 him today. But he has traveled today to get down from New
16 Jersey. You know, I don't know whether he needs to calm
17 down or not. He's been put through a lot today. He had
18 a heart attack about a week, about ten days ago.

19 THE COURT: Gentlemen, I'll leave that to ya'll's
20 discretion, whether or not to call him today or not.

21 MR. HARDY: Yes, sir.

22 MR. MEARS: Mr. Hardy, we -- I've shown you this map
23 and you've looked at it. Could I get a stipulation as to
24 the authenticity of the map for demonstrative purposes?
25 I'm going to go ahead and mark it and ask that it be used

1 in --

2 MR. HARDY: Just number it and introduce it, Judge.

3 It looks like Thomasville.

4 MR. MEARS: I don't want to get into --

5 MR. HARDY: It's not drawn to scale but it looks like
6 it's pretty true.

7 MR. MEARS: It's a photocopy of an official map from
8 the Chamber of Commerce. And I don't want to go any further
9 than that, but I think there's probably some copyright
10 violations going on. But I think we've covered that the way
11 we've made our copies, Your Honor.

12 THE COURT: All right, sir.

13 You may bring the jury in.

14 (Whereupon the jury returns to the courtroom, after
15 which the following transpired)

16 THE COURT: Mr. Mears.

17 CROSS EXAMINATION

18 BY MR. MEARS:

19 Q Good afternoon, Mr. Weaver. Mr. Weaver, how long were
20 you with the Thomasville Police Department?

21 A Approximately thirteen years.

22 Q And you're now in private business; is that correct?

23 A Yes.

24 Q As an officer with the Thomasville Police Department,
25 did you have an opportunity to be a patrol officer as well as a

1 detective?

2 A No; I didn't. I came here as a detective from another
3 department that I'd been in nine years. So I was never a
4 patrolman here, other than for Rose Show day, I did throw on a
5 uniform. Other than that, I didn't.

6 Q Mr. Weaver, as a detective and as a thirteen year
7 member of the police department, were you reasonably familiar
8 with the street patterns and locations of certain points within
9 the city of Thomasville as it may relate to this particular case?

10 A Yes.

11 MR. MEARS: Okay. Your Honor, with the Court's
12 permission I have marked a city map of Thomasville as
13 Defendant's Exhibit 7.

14 I'm going to ask if Mr. Weaver could come down and
15 simply make notations on this to outline some of these
16 geographic locations?

17 THE COURT: Yes, sir.

18 BY MR. MEARS:

19 Q Okay. Mr. Weaver, if you'll come down.

20 A (Witness complies)

21 MR. MEARS: Your Honor, could I ask if the Court could
22 inquire if the jurors can see this from this location, or do
23 I need to move it?

24 THE COURT: Ladies and gentlemen, can you see that
25 sufficiently?

1 MR. WEAVER: I can't.

2 MR. MEARS: Mr. Hardy and I can go ahead and put on
3 our glasses.

4 MR. WEAVER: I need some new ones.

5 BY MR. MEARS:

6 Q Mr. Weaver, for the benefit of the jurors, could you
7 please point out where the Cherokee Apartments are located
8 relative to this particular map? And if I could just get it
9 started at the right place here. Here is Smith Street and
10 there's -- Would you just put a circle around what, the general
11 location of the Cherokee Apartments?

12 A It's going to be in this -- It's in this area here
13 (indicating), I believe.

14 Q There's Cherokee right there.

15 A Yeah. I'd say in this area here.

16 Q Okay. And is the criminal justice center located
17 adjacent to the railroad track that runs in this direction there?

18 A Yes.

19 Q Do you see on the map --

20 A Is this the railroad track?

21 Q This is the railroad track there.

22 A Yes. It runs through there, one side on the railroad
23 track. And then you've got a field. And then the apartments is
24 somewhere in here.

25 Q Okay. So the criminal justice center and then the

1 Cherokee Apartments would be located in this area that you've,
2 you've outlined to the --

3 A That's approximately correct; yes.

4 THE COURT: Gentlemen, you may be blocking some of
5 the jurors at the far end over here.

6 BY MR. MEARS:

7 Q Mr. Weaver, would you also point out on the map the
8 general location of the Madison Street Deli where Mr. Wilson was
9 the clerk? And I believe you'll find it at the corner of Monroe
10 and Madison. Can you, do you see that?

11 A Here we go. Madison Street, and let me find Monroe
12 here. In this general area here.

13 Q Okay. And would you point out the location, general
14 location of the intersection of W. Jackson Street and Pinetree
15 Street as it relates to the location of the then Junior Food
16 Store?

17 A Let's see. This is Monticello here. Pinetree --

18 Q Pinetree is right over here. Come around this way.

19 A Okay. In this area here.

20 Q You can go back to your seat.

21 A (Witness returns to the witness stand)

22 Q Mr. Weaver, could you give an approximate, I realize
23 this would be an estimate only, of the relative distances between
24 the Cherokee Apartments and the Madison Street Deli?

25 A Mile and a half, two miles max.

1 Q Okay. And could you give an estimate, again a general
2 estimate, of the relative distance from the Cherokee Apartments
3 to the intersection of W. Jackson and Pinetree?

4 A Three max, three and a half, three, something like
5 that.

6 Q All right. Now, your first involvement with the case
7 was when you were on duty and you were called around 10:00
8 o'clock or 10:15 or some time on April the 7th to come to the
9 scene of the shooting at the Madison Street Deli; is that
10 correct?

11 A Yes.

12 Q And when you arrived at the scene, you, were you the
13 investigating officer who took control of the scene at that time?

14 A Yes. I was the first investigator there and the one in
15 charge of the scene; yes.

16 Q Had the patrol officers who had first arrived on that
17 scene properly secured the scene in accordance, in accordance
18 with proper investigative techniques, in your opinion?

19 A I believe so, because when they first arrived there, my
20 understanding was their first responsibility was for the injured.
21 And I believe they did take part, them and the ambulance drivers
22 or the, excuse me, the EMT's took place in that. So they might
23 have had to do certain things to, because of the person there.
24 It did seem to be fairly well secured.

25 Q That was in accordance with proper training? If you

1 have an injured person, you take care of them and then you secure
2 the crime scene; is that correct?

3 A Yes.

4 Q Now, you've had an opportunity to review the, at least
5 a portion of the videotape that involves the shooting of Mr.
6 Wilson; have you not?

7 A Yes. It's been a while, but I have.

8 Q Based upon your recollection, I realize it might have
9 been a while since you reviewed it, did you notice any
10 contamination of the scene from, and I'm talking about
11 contamination by way of disturbance of evidence, disturbance of
12 possible fingerprints, things of that nature, by any of those
13 individuals who had first arrived on the scene?

14 A I didn't notice any direct contamination, no, from
15 looking at the video. I didn't -- Not to my knowledge.

16 Q Nothing that just jumped out at you as an experienced
17 investigator?

18 A There, there was movement. There was people walking
19 about. But I knew -- noticed nothing directly, taken away or
20 added to.

21 Q To your knowledge, was a crime scene log prepared and
22 maintained by the first arriving or the second arriving officer
23 on the scene?

24 A By log, they did an incident report and their
25 observations and dealings with the scene were in their incident

1 report.

2 Q Okay. Would, would you agree, and I'm not being
3 critical of the officers, but would you agree that the proper
4 investigative technique in a crime scene is for either the first
5 or second officer arriving on the scene to immediately begin
6 logging the individuals who come on to that scene or who were
7 there at the time that they arrived?

8 A Yes. And I believe they did log, name the people that
9 were there at the time. I believe the officers did list them in
10 their incident report. That is proper.

11 Q And do you recall whether or not there was any attempt
12 to investigate by way of interrogation or interviewing any non
13 police or non emergency personnel who were on the scene or at the
14 scene at the time of their arrival?

15 A I'm not aware of any.

16 Q Okay. You are aware that there were residents at that
17 particular location in and around the store by the time the EMS
18 personnel had arrived?

19 A I couldn't say for sure, because I went straight in. I
20 did not talk to or see the residents myself. So I couldn't
21 testify to the fact whether there was or not --

22 Q Okay.

23 A -- anyway.

24 Q Let me go back just a moment to the log, and please
25 believe me, I'm not criticizing the officers, but I'm asking your

1 opinion as a, as a very experienced investigator, that a log
2 should be kept, shouldn't it, separate and apart from the
3 individual incident reports?

4 A Sometimes logs are kept.

5 Q It allows the investigator such as yourself when you
6 arrive on the scene, look at the scene, then it allows you an
7 opportunity to go back and do in depth investigation by
8 interviewing people who might have seen someone, for instance,
9 coming or going from the scene?

10 A It assists; yes.

11 Q Okay. In this case that wasn't done; was it?

12 A In this case they were, they directed me directly. Was
13 there a written log that anybody handed to me? No. But they did
14 direct me. The officers walked me through and told me, you know,
15 everything they'd done or were doing. So I was -- Somebody was
16 with me there at the first the whole time, as soon as I got
17 there.

18 Q Okay. What about the civilian personnel or those who
19 are non law enforcement or non emergency medical technicians who,
20 who were on the scene or who had been at the scene prior to your
21 arrival? People in addition to those? Residents? Young men who
22 might have been standing by in the parking lot or on the street
23 corner?

24 A I did not talk to any at that time and no one brought
25 any to my attention.

1 Q Okay. Now, and I, I believe you went into the scene,
2 did a, sort of a circular or what the police officer, I think,
3 called it a circular look at the scene, and then came back out
4 and then focused on specific parts of the crime scene; is that
5 correct?

6 A Yes.

7 Q And that's a proper technique to be used; isn't it?

8 A That is.

9 Q Now, did you direct any of the crime scene technicians
10 to take fingerprints, or attempt to lift fingerprints of any
11 particular location in the Madison Street Deli?

12 A I believe we were there together. As far as directing,
13 Sgt. Glenn Hutchinson of the Sheriff's Department, the crime
14 scene tech, did take and look for fingerprints in that area.

15 Q Okay. After you had had an opportunity to go back and
16 review the crime scene, the tape that had been taken on Mr.
17 Griffin's VCR, did you ask Mr. Hutchinson to go back and attempt
18 to lift latent fingerprints from any particular surface in, in
19 the store?

20 A I don't remember exactly asking him that. I couldn't
21 say whether I did or did not. I do not remember.

22 Q Okay. Would that have been his responsibility other
23 than your responsibility?

24 A It would have been his responsibility to do the
25 lifting. Had I seen something or noticed, I guess it would -- we

1 were working it together. You know, it could have been. But
2 it's usually his responsibility.

3 Q Were attempts made to lift latent prints from any part
4 of the store to your knowledge?

5 A I'd have to refer to my notes and see.

6 Q Please do. Please do.

7 A I believe there was -- Let me check real quick and see.
8 At this time, and we're at 12:15, after midnight, at this time
9 crime scene tech, Sgt. Glenn Hutchinson, is going over the crime
10 scene and dusting the cash register area for possible latent
11 prints. And I believe that he did. It's my recollection that he
12 did do some dusting.

13 Q Just on the cash register?

14 A The cash register area, that could be that whole
15 counter top area there. He was in the process of doing that. So
16 that would include more than just a small area.

17 Q Do you recall, having viewed the videotape of the
18 scene, do you recall that, the image of the person who was in the
19 store at the time Mr. Wilson was shot? Do you recall that
20 particular segment of the film where he went back around from the
21 first cash -- and excuse me for turning my back on you -- but
22 there was a cash register here that sort of faced the front, and
23 then there was a cash register or a machine in the back that
24 dealt with the lottery tickets? Do you recall that scene?

25 A Vaguely; yes. I mean, I remember it somewhat. It's

1 been a while. It's been almost three and a half years since I've
2 seen the video.

3 Q And, and I realize that, and I, I'm --

4 A But I do remember somewhat.

5 Q Do you recall the image of that individual going back
6 around the corner, placing his hands on the, what appears to be
7 the metallic or plastic surface of that machine and making a
8 gesture like this (indicating) with his hand on the machine? Do
9 you recall seeing that?

10 A I don't recall specifically one way or the other. I
11 would just have to simply view the video again to do that, to be
12 sure. I couldn't say for sure.

13 Q Okay. Would things like that call attention to someone
14 who was processing the scene for fingerprints who had already
15 viewed that particular videotape?

16 A They could.

17 Q And, again, you weren't the one doing the videotape,
18 excuse me, doing the fingerprints, but a number of people
19 involved in the investigation looked at that videotape early on,
20 even back in Mr. Griffin's office; didn't they?

21 A Yes; they did.

22 Q Okay. Do you recall also the image of the individual
23 who appeared on the videotape as that person left the store,
24 apparently leaving the store with what appeared to be exposed
25 hands with no gloves pushing, at least with one hand and possibly

1 two hands when he went out of the camera range, on what is the
2 glass door there? Do you recall seeing that?

3 A I remember him going out and pushing. What part of it
4 he touched, I could not say for sure without reviewing the video.

5 Q Okay. Would that type of, of action on behalf of
6 someone who had been videotaped lend itself to directing a
7 fingerprint processor to taking fingerprints of those areas where
8 it appeared obviously that the person had touched a glass
9 surface?

10 A It could.

11 Q Okay. Based upon your experience, is glass surfaces
12 more susceptible to the retraction of latent prints than perhaps
13 other types of surfaces?

14 A It can be. I don't know whether he took prints there
15 or not, so I -- You'd have to ask Glenn.

16 Q Would it be a fair statement to say that whatever
17 prints were taken at the Madison Street Deli have been lost?

18 A I don't know that any were lifted. You would have
19 to -- probably. I could not say. Glenn Hutchinson would be the
20 best one to answer that. I, I just couldn't say if there were
21 any.

22 Q And, and I understand. Some of these questions go to
23 other people that, that will perhaps testify. You don't have any
24 direct knowledge of the existence of any fingerprints from the
25 Madison Street Deli that relate to Mr. Ray Cromartie as a suspect

1 in that case; do you?

2 A No; I don't.

3 Q Now, I believe you testified that you went to a
4 particular location and retrieved some clothing that someone had
5 called and said they'd found in their yard? Did I hear that
6 correctly?

7 A Yes.

8 Q Okay. We talked about the green hood before. I'll ask
9 you this. Is this what you found at --

10 A Yes, sir; it appears --

11 Q -- Mr. McRae's yard, or was given to you?

12 A It appears to be.

13 Q To your knowledge, were you ever able to find any hairs
14 or anything like that in this particular garment or in the hood?

15 A I did not find any hairs.

16 Q Did anyone ever look, to your knowledge?

17 A I don't know if they did or not. It was sent to, it
18 was sent off to the crime lab. But I don't -- To my knowledge,
19 none were.

20 Q It was sent to the F. B. I. lab?

21 A Yes.

22 Q Okay. Did ya'll take this out and give it to Pete, the
23 tracking dog to see if he could take a trail from Mr. McRae's
24 yard to any place?

25 A I do not, I don't recall that.

1 Q You're aware that -- You know which dog I'm talking
2 about?

3 A Yes.

4 Q Okay. And assume for my question that Pete was the
5 type of dog that could follow a trail for, that had been created
6 many hours after, and follow that trail. Do you know if anybody
7 ever attempted to do that?

8 A I don't know, to my knowledge, whether they did or not.

9 Q What time of day did you, in the morning, did you find
10 this?

11 A It was before lunch. It was at 11:00 A. M.

12 Q Okay. And you were processing the scene between 10:00
13 and midnight; is that correct? Somewhere in that particular
14 area?

15 A I believe it was 10:45 and on into the night.

16 Q Okay. State's Exhibit 30-A, I believe you testified
17 was the cap that was found?

18 A Yes.

19 Q Was there any attempt to find any hairs in the cap and
20 match those to anyone? Do you know?

21 A Not to my knowledge.

22 Q Did you -- That was sent to Washington too; wasn't it?

23 A I believe so; yes.

24 Q There was no ability to identify that one way or the
25 other from the F. B. I. lab; was there?

1 A No.

2 Q You couldn't either say it was the cap that was on the
3 video or it wasn't?

4 A I couldn't; no.

5 Q And the laboratory people, you recall on the report you
6 got back?

7 A To my knowledge; no.

8 Q They couldn't make it one way or the other; could they?

9 A Right.

10 Q Okay. Now, you arrived at the Junior Food Store
11 approximately what time? And I know --

12 A 10:45.

13 Q Okay. I mean, the Junior Food Store. I'm sorry.
14 I'm shifting --

15 A A little after 4:00 in the morning.

16 Q Okay. I assume you were sort of the detective on call
17 and would handle these type investigations whether you were on
18 the clock or not; is that correct?

19 A Yes; that's correct. We -- I think we had calls by the
20 weekends and it was just whoever weekend it was. It happened to
21 be my weekend or my day to be on call.

22 Q Okay. Now, as I understand it, you did a, an
23 investigation within the store, took photographs. You didn't
24 actually do any of the drawings, either the two scale drawings,
25 or any other type of drawings. Those were done by Mr. Collins;

1 is that correct?

2 A Yes.

3 Q Okay. Did you -- You did make visual observations
4 though with regard to the location of certain items in the store;
5 is that correct?

6 A Yes; I did.

7 Q Now, I know we've got photographs that have been
8 introduced showing the interior of the store. Excuse me one
9 moment.

10 MR. MEARS: I apologize, Your Honor. I'm looking
11 for one specific interior shot. I'll find it in just a
12 few moments.

13 If I could ask Mr. Kleinrock to come look for the
14 interior photograph of the store, the interior
15 photograph.

16 Q I apologize, Mr. Weaver. Mr. Weaver, you've
17 identified, I believe, State's Exhibit 104, 102 and 91, among
18 other photographs, as being the Junior Food Store?

19 A Yes. This is the Junior Food Store. Yes. Junior Food
20 Store. Right.

21 Q It's since been changed and there's a new location and
22 a whole new facade out there; is that correct?

23 A Correct.

24 Q Now, with regard to this photograph here, and I'm
25 referring to 104, would that be a view of the store from W.

1 Jackson Street looking back at the store?

2 A It appears to be, in a corner there.

3 Q Okay. And would the gas -- Is there any obstruction or
4 anything between this, the street and the front of the store from
5 that particular view?

6 A To the front door, nothing blocking it; no.

7 Q Okay. Where are the gas pumps located in that
8 particular photograph, or can you tell?

9 A They're in the front of the store, out from the store.
10 By the photo it looks closer to the grass area than it does from
11 the front of the store. Close to the sign, big sign, right
12 straight across.

13 Q You do a lot of --

14 MR. MEARS: May I stand here for just one moment,
15 Judge?

16 Q You do a lot of photography; don't you?

17 A I do some. I wouldn't say a lot. I do some.

18 Q Would it be a fair statement to say that even the best
19 photographs sometimes distort distances?

20 A They can; yes.

21 Q And simply makes it look either further apart or closer
22 than it really is, simply because of the angle of the camera; is
23 that correct?

24 A Yes.

25 Q Is that another view from Jackson Street?

1 A Yes; it is.

2 Q Okay. Now, I'm asking if you'll look at 91. Is that
3 the BP Station across the street?

4 A Yes; it is.

5 Q That would be the view approximately from the front of
6 the Junior Food Store at the door, looking back across the street
7 into the BP Station; is that correct?

8 A Yes.

9 Q Okay. Now, do you see any lights between the BP
10 Station and that particular front of the Junior Food Store? I'm
11 talking about street lights, things of that nature? I'm not
12 talking about redlights, but street lights or lights of
13 illumination?

14 A There's one. That looks like one there and -- I'm not
15 sure whether this is a light or not. It could be. I see at
16 least two. Two, two lights with poles, or two poles that lights
17 are on is what I see.

18 Q Okay. The lights that you're referring to, they may be
19 better shown in 102. That's a street light there?

20 A Yes.

21 Q Now, let me ask you to look at 104. Do you see any
22 street lights on that side of the store?

23 A I don't see any in this photo.

24 Q So, if you were looking at the store here --

25 MR. MEARS: These are in evidence, Your Honor.

1 Q -- you would have a light over on this side of the
2 store, but do, can you see or discern any lighting at all around
3 the left side of the store? If you were coming out of the store
4 and turning to your left, are there any lights that you can
5 determine from this photograph that were there at that end of the
6 store?

7 A Not from the photo. I don't know -- It's hard to tell
8 the way -- from this photo I don't see any.

9 Q Okay. Look at 102 and see if you can see any lights in
10 there? And that's just a slightly different angle. But there
11 are no lights on that, in proximity to the store at that end; is
12 that correct? That's the end going up --

13 A Not in front. I see one in back, but not in front.

14 Q Okay. And that would be, if you turn left at that
15 corner of the store, that's the way you'd go up to the Providence
16 Apartments; is that correct?

17 A Yes.

18 Q And there doesn't appear to be any lights on that end
19 of the store; is there?

20 A In back, there's one right there in back, if you're
21 going toward Providence.

22 Q Right. But on --

23 A In front, I don't see any in this photo.

24 Q Okay. Thank you.

25 MR. MEARS: Your Honor, these, these are not in

1 evidence yet. I'd like to go ahead and ask Mr. Weaver
2 some questions. I'm sorry. I got ahead of myself
3 thinking that they'd already been entered. If I could
4 have some leeway and ask him some questions with regard
5 to -- I'm sure Mr. Hardy is going to introduce these
6 at some point.

7 THE COURT: All right, sir.

8 BY MR. MEARS:

9 Q I just want to get some idea, and I know Mr. Collins
10 did the drawings, but for the purposes of your testimony, would
11 you please look at State's Exhibit 132 and sort of orient
12 yourself to the store? What I want to find out if I can, Mr.
13 Weaver, is some relative distances within the store itself
14 between the front door and what has commonly been, what has been
15 referred to as the beer cooler. Looking at that, and based upon
16 your recollection, can you provide an estimate of the distance
17 from the front door over to the beer, where the beer is stored?

18 A It'd be a hard -- I can look at the measurements that
19 were done by Ken Collins, or he could, would be a more
20 accurate --

21 Q Okay. I'm sure they would. Just -- Would you defer to
22 Mr. Collins?

23 A Yes, sir. He did take measurements. I think there
24 were some measurements taken. Probably be --

25 Q Okay. That's, that's fair. Let me ask you one other

1 question about this one. State's Exhibit 131. We talked about
2 the beer and the cooler. Do you see any beer in that photograph?

3 A Yes. There's beer stacked behind a Golden Flakes snack
4 center rack.

5 Q That's right out in the open; isn't it?

6 A Yes.

7 Q And is that a stack of cardboard containers of beer in
8 what's usually called twelve packs?

9 A It appears to be; yes.

10 Q Does it appear to have been stacked in some type of
11 display with beer on top of each, beer cartons on top of each
12 other?

13 A Yes; it does.

14 Q How far is that from the cash register in the store?

15 A Maybe five yards. I don't know. I, I, you know, I
16 didn't measure it. I don't know if it was measured or not.

17 Q And --

18 A Five, five to ten yards maybe.

19 Q Assume that the cash register is where you are, and I'm
20 just going to sort of back up, and I know I'm asking you to
21 guesstimate here. But assume the cash register is right where
22 your hand is. Let me back up. How far away were the beer cans?

23 A That's maybe ten, ten yards.

24 Q Somewhere -- Would this be a fair estimate as to where,
25 how far away from the container --

1 A I guess it's a fair --

2 Q -- the containers were? Okay. And the beer cooler
3 would be back down the other side, behind, relative to where I'm
4 standing now; wouldn't it?

5 A From this it'd be straight back in this area here.

6 Q Okay. Sort of over my right shoulder back this way, if
7 I were standing at the beer containers?

8 A Right.

9 Q Thank you, sir. Did you have any involvement in the
10 location of the prints that we've heard some, something about
11 already? The shoeprints outside the store?

12 A I was aware of it and was there, but I did -- mostly I
13 was inside and I observed Ken. But I didn't have any direct
14 involvement in it.

15 Q Okay. On April the 12th in the afternoon, were you
16 working, in the early evening hours, were you working at that
17 time? I'm referring to the time that the incident occurred at
18 the Cherokee Apartments?

19 A I don't think I was on duty. I think that was later at
20 night, late, after dark. I was not on duty that I can remember.

21 Q Okay. When were you first made aware of the shooting
22 at Cherokee Apartments?

23 A The next morning, eightish, nineish. Between 7:00 and
24 9:00 probably when I first came to work.

25 Q Okay. At that point had you assumed leadership in the

1 investigation of both the Madison Street Deli and the Junior Food
2 Store?

3 A Yes.

4 Q And I understand you were working as a team with --

5 A Right.

6 Q -- with Det. Spencer and other people? But usually
7 someone assumes the leadership role and I assume that was your
8 role at that time?

9 A That's correct.

10 Q Had you developed any leads of any type at that time?
11 I'm talking about the morning of the 13th, with regard to who had
12 been involved in the Madison Street assault on Mr. Wilson and
13 the, who was involved in the death of Mr. Richard Slyszy?

14 A Not to my knowledge. There hadn't been any definite
15 concrete witnesses.

16 Q So on the morning of the 13th you were advised in some
17 way or another that there had been a shooting at Cherokee
18 Apartments and some people had been arrested as a result of that
19 particular incident; had they not?

20 A Yes. I was familiar with it.

21 Q And at some point in time an individual came to you
22 and, who was, who had been arrested and had been charged, at
23 least at that point, with involvement in the Cherokee Apartment
24 shooting? That individual came and said, "I've got information I
25 can give you"? Isn't that correct?

1 A He -- I instructed Dets. Guy Winkelman and possibly
2 Mark Scott and some others to interview some people there at the
3 jail in reference to if they knew anything about the Madison
4 Street Deli and the Junior Food Store murder and shooting and
5 robbery. And Det. Winkelman did talk to a subject, Carnell
6 Cooksey, who did come forward, first to Det. Winkelman and then
7 to myself.

8 Q Okay. And that's in accordance with proper
9 investigative procedures, that if you have an open case and you
10 have individuals who have been arrested for related activity,
11 such as violence and that sort of that thing, that you would ask
12 them if they have, you being the investigator, would ask them if
13 they have any knowledge about these other instances?

14 A Yes.

15 Q Isn't that correct?

16 A Correct.

17 Q And that's done as a matter of routine; isn't it?

18 A Yes.

19 Q And in this particular instance Carnell Cooksey, who
20 was under arrest for other charges involving assault, said, "I've
21 got information I can give you"; is that correct?

22 A Yes.

23 Q Okay. And at that point he told you where the gun was
24 that you later found out by the railroad tracks; is that correct?

25 A That's correct.

1 Q Did he indicate to you that Gary Young had tried to get
2 him to hold that gun after the police, after the police had
3 arrived at the Cherokee Apartments on the night before?

4 A I don't remember that in the interview with him. I can
5 go through this thing and see if --

6 Q Well, that would have been significant enough for you
7 to remember; wouldn't it?

8 A He mentioned Gary Young; yes. I would have -- He
9 mentioned, he mentioned the gun and Gary Young, so, you know.

10 Q And, and here again I'm asking you to draw upon your
11 thirteen years of experience. If an individual has a gun and
12 there's been a shooting and the police arrive on the scene, they
13 want to get rid of the gun for two reasons generally; wouldn't
14 you agree? One, they don't want to get caught with the gun in
15 their possession, or the gun is related to some other crime?

16 A Sure.

17 Q That's -- Would that be a fair statement?

18 A Fair statement.

19 Q And in this instance Gary Young wanted to get rid of
20 the gun and you subsequently found out that he threw it away.
21 Now, you don't have any direct knowledge of whether he offered it
22 to Carnell Cooksey; is that correct?

23 A That's correct.

24 Q Okay. Carnell didn't tell you that; did he?

25 A I don't remember him telling me. I can go back through

1 the interview with him and see. But I don't recall now.

2 Q Right now it doesn't --

3 A Right now it doesn't ring a bell; no.

4 Q And I'm not trying to hold you to what someone else
5 said. But you don't -- that's not something that stuck with you,
6 that Carnell Cooksey had said, "Gary Young tried to get me to
7 hold this gun"?

8 A I don't remember it like that; no.

9 Q Okay. But you subsequently found the gun almost
10 exactly where Carnell Cooksey told you it was; didn't you?

11 A Yes; I did.

12 Q And it was in the grass, high grass near the railroad
13 tracks outside the justice center; wasn't it?

14 A Right.

15 Q Okay. Who was present at the time that you found the
16 gun, besides -- Carnell Cooksey didn't go. He just gave you some
17 general directions and you went out there; is that correct?

18 A Yes.

19 Q Who else was there with you?

20 A Det. Winkelman, Lt. Johnson and at some point Sgt.
21 Glenn Hutchinson.

22 Q Okay. After you found the gun, did you then obtain
23 arrest warrants for Gary Young and/or anyone else?

24 A Not right after -- Not right then, right after the gun,
25 no; I didn't.

1 Q Okay. After you found the gun, what was the next thing
2 that you did after finding the gun?

3 A We -- I believe we did some more interviewing. But
4 with the information that we had from Carnell Cooksey, police
5 officers, uniform police officers were dispatched or asked to go
6 to, to the Cherokee Apartments and bring in the two possible
7 suspects, three possible suspects.

8 Q Okay. At that time you were looking for Gary Young?

9 A Yes. Gary, Gary Young and Jeff Cromartie.

10 Q And you weren't looking for Corey Clark at that point
11 because no one had given him up at that point; isn't that
12 correct?

13 A Corey Clark was already --

14 Q He was in jail already?

15 A Yes.

16 Q But you weren't looking for him for the Madison Street
17 Deli or the Junior Food Store; isn't that correct.

18 A At that time; no.

19 Q He had been back in the cell with Carnell Cooksey --

20 A I think from the previous night before; yes.

21 Q Right. Carnell Cooksey and Corey Clark had been in
22 jail that, all that night together?

23 A Yes.

24 Q Okay. Now, when you found the gun, this Raven .25
25 automatic, did you run it through the thing that you police

1 officers do when you find guns? Did you run it through to see if
2 it had been reported stolen, or whether it was, had been
3 identified as being involved in any other crime?

4 A I didn't personally. I don't know if it was done or
5 not.

6 Q Did you ever -- I'm sorry. I didn't mean to cut you
7 off.

8 A I, I don't know that it was run or not. I, I, I don't
9 know whether it was or not.

10 Q Were you ever, at any time ever able to determine where
11 this gun came from? I know it was eventually connected to Gary
12 Young, at least at one point. Did you ever find out where the
13 gun came from beyond Gary Young?

14 A No.

15 Q After you found the gun and you talked to some uniform
16 police officers, then did you obtain arrest warrants for Gary
17 Young?

18 A At some point there was arrest warrants for Gary Young.

19 Q Okay. Let, let me focus on that just a little bit.
20 You went over to the apartment, Cherokee Apartment complex; is
21 that correct?

22 A Yes.

23 Q And you went to one of the apartments and there were
24 several individuals in the apartment that you went to; is that
25 correct?

1 A Yes.

2 Q Would it be a fair statement that you had arrest
3 warrants for Gary Young at that time, but you didn't have arrest
4 warrants for Ray Jefferson Cromartie; did you?

5 A I didn't have arrest warrants for Gary Young either.

6 Q Okay. You took them in -- Did you -- You were looking
7 for Gary Young though; weren't you?

8 A And Jeffrey Cromartie.

9 Q Okay. At that point you were looking -- Did you know
10 who Jeffrey Cromartie was?

11 A We had a name.

12 Q Okay. And you had Gary Young connected to the gun?

13 A (Nods head affirmatively)

14 Q And Jeff Cromartie was in the room, or in the apartment
15 complex there where Mr. Young was; is that correct?

16 A He -- I'm not -- I was there. I don't know exactly
17 each particular place. There were several officers that went
18 there. But his name and Gary Young had, had been brought up;
19 yes.

20 Q Okay. And so, you, you took them into custody without
21 arrest warrants; is that correct?

22 A Yes.

23 Q And upon what basis did you arrest them without an
24 arrest warrant? Had a crime been committed in your presence?

25 A In my presence?

1 Q Yes, sir.

2 A No. Just information and probable cause to detain them
3 to investigate further to get an arrest warrant.

4 Q Okay. Wouldn't the proper procedure have been if you
5 had probable cause, and I know I'm asking you to go back a ways,
6 but wouldn't the proper -- if you had probable cause to arrest
7 Gary Young based upon his connection with the gun would be to
8 present that to a magistrate and get an arrest warrant?

9 A The time was a factor here because of the type crimes,
10 robbery and homicide. It was the utmost importance that we get
11 them if they were suspects and get them there as soon as we
12 could.

13 Q And so you, you arrested them, took them to the police
14 station. How long were they in custody, Mr. Cromartie in custody
15 and Mr. Young in custody, before you obtained arrest warrants?

16 A The arrest warrants were taken the next day.

17 Q So they were held at least twenty-four hours without
18 arrest warrants; weren't they?

19 A It was probably more like -- It could have been close,
20 close to twenty-four hours.

21 Q Somewhere, I bet you it was somewhere close to twenty-
22 four hours. I'm not pinning you down, but somewhere close to a
23 full day they were held in jail without arrest warrants; is that
24 correct?

25 A That's correct. They were being -- The investigation

1 was continuing and they were being interviewed.

2 Q Okay. They were being interviewed. They weren't free
3 to go; were they?

4 A At that time; no.

5 Q And did you pull up Gary Young's rap sheet?

6 A At that time I didn't. I don't --

7 Q Did someone else do it?

8 A I did not -- I don't really remember if anybody did or
9 not.

10 Q Okay. Now, in interviewing Gary Young, and the jury's
11 heard at least one version of his account of what took place.
12 You stopped the tape toward the end. You ended the interview.
13 And it's been -- I mean, I'm not saying you did anything
14 improper. But the tape was stopped and there was a break of
15 several minutes and you went back on and Gary changed his story,
16 at least in part, at that point; didn't he?

17 A He added to it, yes; and there was some changes.

18 Q And you determined, based upon what he told you after
19 you restarted the interview, that he had been lying to you about
20 a number of things previously; hadn't he?

21 A Or he didn't remember. I don't know if he was
22 deliberately lying. There was some things that he added to it.

23 Q Well, he told you initially he didn't know whose gun it
24 was?

25 A He did say that; yes.

1 Q And that wasn't true; was it?

2 A That wasn't true.

3 Q And he told you he didn't know who gave the gun to Ray
4 Cromartie?

5 A At one point, yes; he did say that.

6 Q Okay. You -- Later you believed that he gave the gun
7 to Ray Cromartie; didn't you?

8 A He said -- He later did say that he did; yes.

9 Q And your pursuing Ray Cromartie at that time was based
10 upon Gary Young's testimony, statements to you; wasn't it?

11 A And Carnell Cooksey.

12 Q Yeah. Gary Young also told you that he didn't know who
13 the other dude was that he'd referred to earlier? And I'm using
14 his terms.

15 A Yeah.

16 Q You later found out it was Corey Clark; didn't you?

17 A Yes.

18 Q Do you really think he forgot who Corey Clark was?

19 A I think that he added more to it.

20 Q Corey Clark was his, one of his best friends; wasn't
21 he?

22 A I, I don't know if he was his best friend or not. I
23 know that they knew each other.

24 Q Okay. Gary Young also told you that he didn't know
25 how, according to his story, he didn't know how these dudes got

1 out to the Junior Foods and back? He told you he thought they
2 might have walked. Do you remember that? That was on the tape.

3 A Yes.

4 Q You later found out that was a lie too; didn't you, at
5 least based upon his subsequent stories? He implicated Thaddeus
6 Lucas; didn't he?

7 A Yes.

8 Q And he implicated Thaddeus Lucas because Thaddeus Lucas
9 had a car?

10 A I, I don't believe he said that in the interview. I
11 don't think he said that they drove his car. But, --

12 Q Later you found out --

13 A He did implicate -- I did find out that they were in
14 Thaddeus' car, but, no; I don't think I found out from Gary
15 Young.

16 Q And, but Gary Young told you he didn't have any idea
17 how they got, how they got out there?

18 A That's correct.

19 Q From subsequent statements from other individuals, and
20 I'm not asking you what those statements were, but you did
21 determine that he was present with Thaddeus Lucas that very night
22 that the Junior Food Store was robbed; didn't you? You did
23 determine that; didn't you?

24 A That Gary Young was with him?

25 Q With him at the Cherokee Apartments?

1 A They had -- Yeah, he did see him earlier in the night.

2 Q Okay. And Gary Young initially told you that he didn't
3 drink any beer that had been brought back to the Cherokee
4 Apartments; didn't he? Or did he?

5 A There was mention of beer in there. I don't know if I
6 particularly asked him did he drink any beer or not. I don't
7 know.

8 Q Would it be a fair statement, Mr. Weaver, that Mr.
9 Young's statement to you, both before you cut off the interview
10 the first time and after you started it back, was full of enough
11 holes to drive a truck through as far as the truth?

12 A He said the truth. There was -- He added to it when
13 questioned further. He, he told more truths.

14 Q He told more untruths; didn't he?

15 A The second time?

16 Q Yes.

17 A He filled in more, more details.

18 Q He lied to you about whose gun it was; didn't he?

19 A At one point; yes.

20 Q He lied to you about it more than once; didn't he?

21 A And he --

22 Q Before you cut off the tape and after?

23 A He did lie about it, but he did finally admit to it.

24 Q Well, in the interview he never admitted it was his gun
25 even after you cut the interview back on; did he?

1 A He meant that he -- He admitted to having possession of
2 it. He admitted to shooting the gun in the air, as a matter of
3 fact.

4 Q He never told you this was his gun, that he had traded
5 for it up in Boston and he'd been carrying it around the projects
6 for several weeks prior to this time?

7 A Not in that interview; no.

8 Q You later found out that to be the truth though; didn't
9 you?

10 A Yes.

11 Q When you arrested -- You did arrest Ray Cromartie and
12 eventually got a warrant for him. You took his clothing from
13 him; did you not?

14 A At some point his clothes were taken; yes.

15 Q Okay. And those clothes were turned over to Ms. Fran
16 Everett; is that correct?

17 A Yes.

18 Q She'd be the person to identify the clothes that you
19 turned over? She'd be a better person to do that?

20 A Probably; yes.

21 Q Okay. Do you recall Ray Cromartie's physical
22 appearance at the time you arrested him in April of 1994?

23 A Briefly. I didn't talk to him very long at that time.
24 I did see him.

25 Q I'm going to hand you what's been marked as Defendant's

1 Exhibit 6. It's a photograph. Does that refresh your
2 recollection of Ray Cromartie at the time you took him into
3 custody?

4 A It, it does appear to look like him; yes.

5 Q Does it appear to resemble him at the time you took him
6 into custody?

7 A Yes.

8 MR. MEARS: Your Honor, I'd tender Defendant's -- I'm
9 sorry. Mr. Hardy has seen this, but I forgot to show it to
10 him.

11 Q Let me -- This is Defendant's Exhibit 6. It's the
12 book-in photograph at the time you arrested him. And it's got
13 the numbers cut off the bottom.

14 A Okay.

15 Q Just as a matter of practice, you, you know how that's
16 done, cut off the numbers?

17 A Sure.

18 Q And does that resemble him at the time --

19 A It does. I didn't see him but very briefly.

20 MR. MEARS: Okay. Your Honor, I'd tender State's,
21 excuse me, Defendant's Exhibit Number 6 into evidence.

22 THE COURT: Any objections, Mr. Hardy?

23 MR. MEARS: This is the computer --

24 THE COURT: It's admitted without objection.

25 MR. MEARS: And let me correct that. Thank you, Your

1 Honor. I just want to correct this. I put the wrong date
2 on this. This is the computer photograph from May 25th of
3 1994. It was a month after he was arrested.

4 Q I wasn't trying to --

5 A Sure.

6 Q I wasn't trying to trick you. I just forgot the date.
7 I thought that was the April, but it's May of the same year, May
8 of 1994.

9 A Sure.

10 MR. MEARS: Okay. Number 6, Your Honor.

11 THE COURT: Yes, sir.

12 Any objections, Mr. Hardy?

13 MR. HARDY: No, sir.

14 MR. MEARS: Your Honor, may I publish this to the jury
15 at this time?

16 THE COURT: Yes, sir.

17 (Whereupon Mr. Mears tenders photograph to the jury)

18 BY MR. MEARS:

19 Q His hairstyle has changed since then. Would you agree?

20 A Yes.

21 Q Okay. After you interviewed Mr. Young, did you then go
22 out and conduct any other investigation at the Cherokee
23 Apartments with regard to Mr. Young's involvement in the Madison
24 Street Deli robbery?

25 A Yes. I asked people, you know, if he was involved in

1 it.

2 Q Were the charges subsequently dropped against Mr. Young
3 for the Madison Street Deli, to your knowledge?

4 A I don't know for sure. I don't know if they're still
5 standing. I don't know whether they were or not.

6 Q Okay. You didn't, you didn't withdraw them; did you?

7 A I did not withdraw any charges; no.

8 MR. MEARS: I think I'm through, Your Honor. If I
9 could just check with co-counsel one second?

10 THE COURT: Yes, sir.

11 BY MR. MEARS:

12 Q Mr. Weaver, during your interview of Gary Young, do you
13 recall asking him a question with regard to his relationship with
14 Ray Cromartie? Do you recall getting into that line of
15 questioning? Of course, we've heard the tape and you played it.

16 A I believe I did. I believe I did.

17 Q Do you recall him saying that Ray Cromartie had only
18 been in town for three or four weeks at that time?

19 A I believe so.

20 Q Relative newcomer to the Cherokee Apartments; wasn't
21 he?

22 A Yes.

23 MR. MEARS: Okay. Thank you, Mr. Weaver. I appreciate
24 your patience.

25 THE COURT: Mr. Hardy?

REDIRECT EXAMINATION

BY MR. HARDY:

Q Mr. Weaver, I think you said you saw the shoeprint out there in the mud?

A Yes. I was out there when Ken Collins was observing it.

Q This shoeprint right here, 100, 98 and 99?

A Yes; that appears to be it.

Q Had an occasion to look at Mr. Cromartie's shoes, Number 18-D? B, excuse me? That's the bottom of them?

A I did. I have -- I'm looking at them; yes.

Q Have you come to any opinion as to whether they look alike or not?

MR. MEARS: Your Honor, I'm going to object unless there's been a foundation laid for identification procedures and techniques with regard to these particular shoes. Unless -- The shoes are already in evidence and they've been identified as Mr. Cromartie's. But if any identification is going beyond that, I would respectfully submit there has to be some foundation laid for an expertise in this particular area.

THE COURT: Overruled.

BY MR. HARDY:

Q You can see with your eyes, Chuck?

A Yes.

1 Q Can you see the bottom of the shoes?

2 A Yes.

3 Q And can you look at the picture?

4 A Yes; I can.

5 Q Do they look similar to you?

6 A They look similar.

7 Q Gary Young, bag, 27-C. Mr. Young's shoes. What kind
8 of shoes did he have on?

9 A Black tennis type shoes, tennis shoes.

10 Q Can you see the bottom of them?

11 A Yes; I can.

12 Q Do they look anything like that?

13 A No; they don't.

14 Q 16-A, Thaddeus Lucas. Would you look at those shoes?
15 What kind are they?

16 A Nike Air.

17 Q Look at these shoeprints, look at the pictures?

18 A Yes.

19 Q Do they look alike?

20 A No; they don't.

21 Q Corey Clark, 14-A. What kind are they?

22 A They're Nike also.

23 Q Look at this, look at the picture?

24 A Yes.

25 Q Any similarity?

1 A No similarity.

2 Q This is the right foot, left foot of Mr. Cromartie?

3 A Yes.

4 Q These are what? Do you know the brand of these?

5 A They're Adidas.

6 Q The others were not Adidas?

7 A No.

8 Q Out of the four pair are any of them Adidas but Mr.
9 Cromartie's?

10 A They appear to be Adidas. The others are not.

11 Q Both have the same tread design at the bottom?

12 A Yes.

13 Q Mr. Mears asked you a lot about investigative
14 techniques, et cetera. Did you follow to the best of your
15 ability the techniques that you were trained?

16 A Yes; I did.

17 Q Did you ask Mr. Hutchinson to do part of the things
18 that you asked, Mr. Mears asked you about?

19 A Yes; I did.

20 Q He showed you the picture of Mr. Cromartie, 6-D, I
21 believe it is?

22 A Yes.

23 Q 170, 71, 72 and 73, can you look at those for me,
24 please?

25 CLERK: I think we've already got those numbers.

1 MR. HARDY: 170.

2 CLERK: Oh, 170.

3 MR. HARDY: Yes, sir. 170, 171, 72, 73.

4 A Yes, sir.

5 Q Are those arresting, about this contemporary, with the
6 one Mr. Mears had of Mr. Lucas, Mr. Clark, Mr. Young and, the
7 other name escapes me at this time? Mr. Clark, Mr. Young, Mr.
8 Lucas --

9 THE COURT: Mr. Hardy, which, which photograph, which
10 number is of which person?

11 BY MR. HARDY:

12 Q Could you just read them out to me, please?

13 A Okay. 172 will be Carnell Cooksey.

14 Q Okay.

15 A And 173 will be Thaddeus Lamar Lucas.

16 Q Yes, sir.

17 A And 171 is Corey Allen Clark.

18 Q Yes, sir.

19 A And 170 is Gary Lamar Young.

20 Q These were about the time of the arrest, the way they
21 looked?

22 A They looked -- Yes.

23 MR. HARDY: We'd offer them into evidence, Your Honor.

24 MR. MEARS: No objection.

25 THE COURT: Admitted without objection.

1 MR. HARDY: He's with the Court.

2 THE COURT: Mr. Mears --

3 RECROSS EXAMINATION

4 BY MR. MEARS:

5 Q Mr. Weaver, have you had any specialized --

6 THE COURT: -- excuse me just a minute. We have
7 someone that needs some water.

8 Ms. Peters, if you could get her a cup of water,
9 please, ma'am.

10 (Whereupon there is a brief delay)

11 THE COURT: Mr. Mears.

12 MR. MEARS: Thank you.

13 Q Mr. Weaver, have you had any specialized training in
14 the identification of shoeprints?

15 A No; I haven't.

16 Q Okay. Have you had any advanced course work or
17 anything of that nature in the technical aspects of identifying
18 shoeprints?

19 A No; I haven't.

20 Q Okay. You were asked, based upon your observation of
21 the shoeprints out at Junior Food and looking at these shoes
22 here, whether they were similar?

23 A Yes.

24 Q Is that correct?

25 A Yes.

1 Q You're not telling this jury that's the same shoe
2 though; are you?

3 A I'm just saying they were similar.

4 Q But you don't know whether Ray Cromartie was wearing
5 these on April the 10th; do you? These were the shoes he was
6 wearing when he was arrested on April the 13th?

7 A Right.

8 Q So you don't know whether these shoes were the shoes he
9 was wearing on April the 10th, April the 9th, 10th, or any other
10 time; do you?

11 A I don't know.

12 Q Do you know the brand of that particular shoe?

13 A I believe it's Adidas.

14 Q Do you know the style? Not that I would know, Mr.
15 Weaver.

16 A I just know it's Adidas high top. I think the style is
17 written on it though. I believe, Pro Model, Adidas Pro Model.

18 Q It's a Pro Model. Are you aware that between 1989 and
19 1994 there were one million, three hundred and eighty-seven
20 thousand, four hundred and twenty-four (1,387,424) pairs of
21 Adidas Pro Model shoes made in the United States?

22 A I was not aware of the number; no.

23 Q Are you aware that in, between 1989 and 1994 there were
24 eight hundred and twenty thousand, six hundred and fifteen
25 (820,615) pairs of Super Star Adidas made in the United States?

1 Were you aware of that?

2 A No; I was not.

3 Q Are you aware that the Pro Model Adidas and the Super
4 Star Model Adidas both have dye cut, even midsole, rubber
5 outsole, with herringbone profiled soles? The soles are the same
6 on both of those shoes. One's a high top and one's a low top.

7 Were you aware of that?

8 A No; I wasn't.

9 MR. MEARS: Okay. Nothing further.

10 Oh, I'm sorry. One more thing.

11 Q Were you around -- Were you involved in the picking up
12 of Thaddeus Lucas' car in Bainbridge?

13 A Yes; I was.

14 Q Did anyone fingerprint that car to determine who had
15 been in it? Let, let me back up. I'm sorry. Let me rephrase
16 the question. When did you pick up Thaddeus Lucas' car in
17 Bainbridge?

18 A Let me refer to my notes on that. Let's see. Okay.
19 4-20-94, at Chapman's Garage in Decatur County.

20 Q Were you able to ascertain how long the car had been
21 impounded in that particular garage by, by April the 20th?

22 A On 4-24-94 at approximately 10:05 A. M. I received a
23 copy of a bill from a Lenora Chapman from Chapman's Paint and
24 Body Shop where they had towed the car in on 4-13-94 at 2:00
25 P. M.

1 Q So, from 4-13-94 until the time you picked it up the
2 car had been impounded; is that correct?

3 A According to these notes; yes.

4 Q So according to those dates, from the day after the
5 shooting at Junior Food Store the car had been impounded in a
6 known secure location; had it not?

7 MR. HARDY: That's a misstatement of facts, Your
8 Honor. He's getting his dates mixed up. 10th to the 13th
9 is three days.

10 MR. MEARS: Well, I'm, I'm -- Thank you.

11 Q From the 10th through the time on the 13th, it had been
12 impounded in a secure location in Bainbridge, Georgia; had it
13 not?

14 A It would have been in Bainbridge at the time. I don't
15 know how secure it was.

16 Q Well, let me ask you this. Were there any attempts at
17 all to make, to lift any fingerprints from the inside of the car?

18 A I did not. I'm looking to see if it's in my notes. I
19 could not say whether -- I don't know whether Sgt. Hutchinson --
20 He did go with me there. And I don't remember whether he took
21 any prints or not, or whether it was towed back and he took them
22 later.

23 Q Would it be a fair statement that he didn't try to lift
24 any prints in your, in your presence?

25 A I do not remember him -- I took the photos but I don't

1 remember him taking any prints at that time.

2 Q Would it have been your procedure at the time to have
3 made a notation of the fact that prints were being attempted to
4 be lifted from a particular location?

5 A Yes.

6 Q You, you were keeping notes with a hand held microphone
7 during all this time, I mean, a micro cassette recorder; were you
8 not?

9 A Yes.

10 Q And that was your practice; was it not?

11 A Right.

12 Q And there's no record in your file that anyone
13 attempted to find or locate fingerprints inside the car after you
14 picked it up at, from Bainbridge, Georgia; is that correct?

15 A According to my notes, Hutchinson was with me. Whether
16 he did or not, I don't have it in my notes.

17 MR. MEARS: Okay. Thank you, Mr. Weaver. You've been
18 very patient.

19 Thank you, Your Honor.

20 THE COURT: Anything else, gentlemen?

21 MR. HARDY: I think he's supposed to be on call, Your
22 Honor. We know what his phone number is.

23 THE COURT: All right, sir. You are excused.

24 MR. MEARS: Your Honor, I'd tender, excuse me just a
25 moment, Defendant's Exhibit 7, simply the map. I think I

1 failed to tender it into evidence. I don't think there's
2 an objection. Can I go ahead and put that into evidence
3 now?

4 THE COURT: Any objections?

5 MR. HARDY: No, sir.

6 THE COURT: It's admitted without objection.

7 Gentlemen, was there one more witness that you need to
8 consider whether or not to call today?

9 MR. HARDY: I think we can go for the day if the Court
10 would like. It's getting later than we have been. And
11 start up tomorrow.

12 THE COURT: All right, sir.

13 Ladies and gentlemen, this looks like a good
14 opportunity for us to recess for the evening. So in a
15 moment I am going to excuse you and ask that you return back
16 to the jury room by 9:00 A. M. tomorrow morning and we hope
17 to start the, resume the trial promptly at 9:00 A. M.

18 I'm going to repeat myself and I'm going to repeat
19 myself each evening. It is very important that your
20 decision be based solely on the evidence presented in this
21 courtroom and the legal instructions given you by the Court.
22 Please do not talk with anyone about this case. That
23 includes spouses, children, others that you see on a regular
24 basis with and very close to. Sometimes it becomes very
25 tempting, either answer a question or to discuss something

1 of this nature. Do not talk with anyone about this case
2 whatsoever. That includes among, discussions among
3 yourselves or before you've heard all the evidence and
4 received the instructions of the law and begun your
5 deliberations. Don't allow anyone to talk with this case,
6 about this case in your presence or within your hearing. Do
7 not read anything about the case. Do not listen to anything
8 about the case. Do not watch anything or read anything that
9 might have a plot or a subject matter or a theme that could
10 be considered violent in nature or content.

11 Are there any other cautionary instructions requested
12 on behalf of either party?

13 MR. HARDY: They're just all the same instructions
14 we've already had. The Court has covered them. Thank you.

15 THE COURT: Thank you, ladies and gentlemen. Everyone
16 remain seated while they retire for the evening.

17 (Whereupon the jury retires from the courtroom, after
18 which the following transpired)

19 THE COURT: Anything that needs to be addressed prior
20 to recessing for the evening?

21 MR. HARDY: Just want to have the witnesses come back
22 at 9:00. And I would like to ask Mr. Seitz if he's feeling
23 fine. He's the man with the heart attack that Mr. Mears had
24 -- I want to make sure he's feeling okay, Judge. I don't
25 want to impair his health.

1 MR. MEARS: Your Honor, Mr. Seitz apparently has some
2 great concern about his cross examination by us. I'd like
3 an opportunity to talk with Mr. Seitz before he gets on the
4 stand so that he doesn't freeze up on us.

5 MR. HARDY: I just want him to be comfortable, Your
6 Honor, if I could please --

7 THE COURT: Is Mr. Seitz outside?

8 MR. HARDY: We want to talk to him outside the
9 courtroom.

10 THE COURT: I understand that.

11 MR. HARDY: Yes, sir. He --

12 THE COURT: I was just going to suggest an opportunity
13 for Mr. Mears to meet him and if Mr. Seitz wishes to talk to
14 Mr. Mears, he'll be given that opportunity to do so.

15 MR. MEARS: We could retire and do that now, Your
16 Honor.

17 THE COURT: Yes, sir.

18 MR. HARDY: Everybody else at 9:00 in the morning.

19 THE COURT: 9:00 o'clock.

20 MR. HARDY: Everybody at 9:00.

21 THE COURT: Yes, sir.

22 We'll be in recess until 9:00 A. M.

23 (Whereupon the Court is recessed for the day, with the
24 proceedings to be resumed the following A. M.)

25 * * * * *

C E R T I F I C A T E

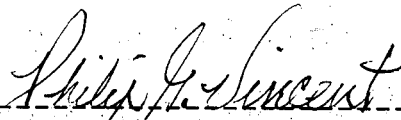
STATE OF GEORGIA

COUNTY OF LOWNDES

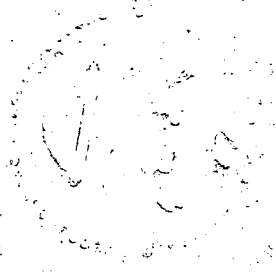
I hereby certify that the foregoing proceedings were taken down by me, as stated in the caption, and that the foregoing pages 1889 through 2221 represent a true, correct, and complete transcript of said proceedings.

I further certify that I am neither of kin nor counsel to the parties in this matter, nor am I financially interested in same.

This the 17th day of November, 1997.



PHILIP G. VINCENT, C.C.R.
CERTIFICATE NO: A238
OFFICIAL COURT REPORTER
SOUTHERN JUDICIAL CIRCUIT



IN THE SUPERIOR COURT OF THOMAS COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

CRIMINAL ACTION NO: 94-CR-328

VS

CHARGE: AGGRAVATED ASSAULT
(COUNT 1);
POSSESSION OF A FIREARM
DURING THE COMMISSION OF
A CRIME (COUNTS 2, 4, 6, 8);
AGGRAVATED BATTERY
(COUNT 3);
MURDER (COUNT 5);
ARMED ROBBERY (COUNT 7)

RAY JEFFERSON CROMARTIE
DEFENDANT

CRIMINAL JURY TRIAL UNDER THE
UNIFIED APPEAL PROCEDURE

* * * * *

The following transpired before the Honorable Frank D. Horkan, Judge, Superior Courts, and a Jury, in the Thomas County Courthouse, Thomasville, Georgia, with voir dire and selection of the Jury commencing at 9:35 A. M. on Monday, September the 15th, 1997, and concluding at 10:20 A. M. on Friday, September the 19th, 1997, and the case-in-chief commencing at 10:50 A. M. on Friday, September the 19th, 1997, and concluding at 10:40 A. M. on Wednesday, October 1st, 1997.

* * * * *

APPEARANCE OF COUNSEL:

Representing the State: James E. Hardy, Esq.
Mark E. Mitchell, Esq.
Assistant District Attorneys

Representing the Defendant: Michael Mears, Esq.
Carl A. Bryant, Esq.
Gerard Kleinrock, Esq.

VOLUME VII OF TEN VOLUMES

(This volume contains the proceedings commencing at 9:05 A. M. and concluding at 5:45 P. M. on Wednesday, September the 24th, 1997.)

1 (The eighth day of proceedings commences at
2 approximately 9:05 A. M. on Wednesday, September
3 the 24th, 1997, outside the Jury's presence)

4 THE COURT: Gentlemen, are we ready to proceed at this
5 time?

6 MR. MEARS: Yes, Judge. I apologize for not being
7 here. I was talking to Dr. Parker.

8 THE COURT: You may bring the jury in.

9 (Whereupon the jury returns to the courtroom, after
10 which the following transpired)

11 THE COURT: Good morning, ladies and gentlemen.

12 Ladies and gentlemen, at this time, prior to resuming
13 the trial and bringing the first witness in for the day, let
14 me ask whether or not at this time any of you have read
15 anything about this particular case, newspapers or
16 otherwise, headlines or substance of any articles?

17 Have any of you talked with anyone about this
18 particular case, or had anyone attempt to talk with you
19 about this particular case, or talk about this particular
20 case in your presence or within your hearing?

21 Have you seen anything about this case or heard
22 anything about this case through any news media, newspaper,
23 radio, television or otherwise?

24 Thank you, ladies and gentlemen.

25 Any further questions in regard to that particular

1 subject matter, gentlemen?

2 MR. HARDY: No, sir.

3 MR. MEARS: Nothing further.

4 THE COURT: Mr. Hardy, who is your next witness?

5 MR. HARDY: Dr. John Parker.

6 THE COURT: Dr. Parker, if you would have a seat up
7 here, please, sir.

8 If you would raise your right hand, please, sir?

9 Do you solemnly swear or affirm that the evidence
10 you'll be giving this Court and this jury in the matter now
11 pending before the Court shall be the truth, the whole
12 truth and nothing but the truth, so help you God?

13 DR. PARKER: I do.

14 THE COURT: Mr. Hardy?

15 JOHN B. PARKER, M. D.

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HARDY:

19 Q State your name for us, please, sir?

20 A Dr. John B. Parker.

21 Q And what's your profession, please, sir?

22 A Medical Examiner.

23 Q And where are you employed, please, sir?

24 A Full time at Bibb County and surrounding counties. I'm
25 Associate Medical Examiner for Fulton County and also the State

1 of Georgia at Atlanta.

2 Q How long have you been with the G. B. I.?

3 A Since October the 1st of 1990.

4 Q Can you tell us a little bit about your background and
5 training, please, sir?

6 A My medical education was the Medical College of
7 Virginia and this was followed by internship and this was
8 followed by two years of family practice in medicine. This was
9 followed by a training program in anatomical and clinical
10 pathology, Methodist Hospital of Indiana, which is a portion of
11 the Indiana University at Indianapolis. Fifth year of pathology
12 training was in electron microscopy and surgical pathology at
13 Baylor University Medical Center, Dallas, Texas. This was
14 followed by two years of service pathology and teaching. And
15 this was followed by a training program in medical examiner or
16 forensic medicine at the Southwestern Institute of Forensic
17 Sciences at Dallas, Texas, which is a portion of the University
18 of Texas, Southwestern School of Medicine.

19 Q And then you came to Georgia and started with the
20 Georgia Crime Lab?

21 A Yes. Yes. After five years of --

22 Q Are you licensed to practice medicine in the state of
23 Georgia?

24 A Yes.

25 Q Have you testified as an expert in the field of

1 pathology in the state of Georgia before?

2 A Yes. This is my thirty-seventh time this year.

3 Q This year?

4 A Yes.

5 Q You've testified in other years, I suppose?

6 A Usually about fifty-five times, fifty to fifty-five
7 times.

8 MR. HARDY: Your Honor, we'd submit him as an expert
9 in the field of pathology and autopsy.

10 THE COURT: Do you wish to inquire?

11 MR. MEARS: We have no objections to Dr. Parker begin
12 qualified as an expert, Your Honor.

13 THE COURT: He'll be qualified as an expert in that
14 field and allowed to render his opinions in regards to
15 that subject matter.

16 BY MR. HARDY:

17 Q Dr. Parker, on or about April the 10th or thereabouts
18 of 1994, were you called to do an autopsy on a Richard Slyszy,
19 please, sir?

20 A Yes.

21 Q Was it assigned a crime laboratory number, please, sir?

22 A The crime lab number is 94 -- I've halfway forgotten it
23 now. 94-1784.

24 Q And where did you do the autopsy, please, sir?

25 A This was -- the autopsy was performed at the forensic

1 laboratory on Panthersville Road, the Georgia Bureau of
2 Investigation in Atlanta.

3 Q Just for us, tell us what an autopsy, what does that
4 word mean? What do you do in an autopsy?

5 A Well, in the forensic sense an autopsy evaluates the
6 clothes on the body and the external surfaces of the body with
7 photography for documentation, and then internal examination of
8 the body, what we think about the autopsy, examines the abdominal
9 and the chest and the brain with the internal examination.

10 Q Is that what you did in this case?

11 A Yes.

12 Q And you say it was done where again, please, sir?
13 Where was it done?

14 A Yes. This was at the G. B. I. office in Atlanta on
15 Panthersville Road.

16 Q 48, can you -- is that the man you did the autopsy on?

17 A It is.

18 Q And his name is what?

19 A Richard Slys.

20 Q What do you start in an autopsy by doing?

21 A If we have a history, we try to review the history if
22 it's available. Then an external examination of the body, of the
23 clothes. If there's injuries, then documentation of the external
24 surfaces of the body.

25 Q Were you able to determine how tall he was and how much

1 he weighed and how old he was?

2 A We were told that he was fifty-one years old. He
3 weighed with body bag one hundred and seventy-nine pounds, and he
4 was five, seven inches in height, I believe.

5 Q Did you take any photographs, Doctor, during the
6 autopsy?

7 A Yes, sir. At my request.

8 Q And was the body cleaned?

9 A No, sir.

10 Q Was it examined prior to cleaning or what?

11 A Yes. It was first examined for injuries and then the
12 body is cleaned, unclothed and photographed and then autopsied.

13 Q Did you notice any injuries to the man?

14 A Two injuries that are obvious. A gunshot wound in
15 about this area (indicating), number one. And the second gunshot
16 wound, entrance wound in about this area (indicating).

17 Q Let me show you these two photographs first, please,
18 sir, 143 and 148, and ask if you can identify them, please, sir?

19 A This is the photograph taken at the time of autopsy at
20 the morgue at the G. B. I. and the body is clothed. And this is
21 a photograph of his head at the time of autopsy. His glasses
22 were still in place and he has not been cleaned.

23 Q Anything wrong with one of his glass lens?

24 A His lens is missing on the right side.

25 Q Are these fair and accurate representations of the way

1 you saw him?

2 A Yes.

3 MR. HARDY: Your Honor, we'd offer 143 and 148 into
4 evidence.

5 MR. MEARS: No objection.

6 THE COURT: It's admitted without objection.

7 BY MR. HARDY:

8 Q Did you find any other injuries to the body other than
9 the two gunshot wounds?

10 A No.

11 Q Can you tell us about the gunshot wounds? I think you,
12 just for your purposes, named them one as one and one as two?

13 A Yes.

14 Q That doesn't mean anything one way or the other?

15 A No; it does not.

16 Q Start with the one at the eye, please, and if you could
17 describe that for us?

18 A The entrance wound is very irregular, right, right here
19 at the cheek (indicating), with contusion and, and tearing of the
20 skin around the entrance wound. There was no gunpowder or
21 gunpowder residue or soot around the entrance wound.} Wasn't any
22 stippling or scratching of the skin.

23 Q What does that mean?

24 A Where the unspent gunpowder strikes the skin and
25 abrades it but doesn't stay stuck to the skin as far as any

1 tattooing. That's the same thing that the gunpowder stays in the
2 skin.

3 Q Would going through the glass have interfered with that
4 process?

5 A Yes; it may have.

6 Q Let me show you these photographs, 144 and 147. If you
7 could look at them for me, please, sir?

8 A This is a photograph again of the decedent during
9 removal of some of the blood and the clothing and his glasses.
10 In one, the second film here is a closer film taken of the
11 decedent's face at the site of the injury.

12 Q This is the wound under the eye?

13 A That's the wound under his eye.

14 Q Does that depict what you just testified about the
15 injury to the eye?

16 A Yes; it does.

17 Q Okay. Can you tell us the flight of the bullet?

18 A After perforating, going through the skin here, the
19 bullet went acutely upward and to the right. It went from front
20 to back, right to left and upward and it went through the part of
21 the nasal plate on the inside into the base of the skull in an
22 area called the ethmoid plate, through the dura and ended up in
23 this portion of the frontal lobe of the brain, the cerebellum.

24 MR. HARDY: Your Honor, we'd offer 144 and 147 into
25 evidence.

1 MR. MEARS: Your Honor, I don't think I have any
2 objection. Let me just make sure and know which ones
3 those are.

4 Your Honor, we would object on, solely on the basis
5 of the duplication of the two photographs. 144 and 147
6 are the same gunshot wound, same face. It's simply
7 duplicative and we would object on that basis.

8 THE COURT: Mr. Hardy, let me see the photographs,
9 please, sir.

10 State's 144 and 147 are admitted over objection.

11 MR. HARDY: Publish them to the jury, Your Honor?

12 THE COURT: Yes, sir.

13 (Whereupon Mr. Hardy publishes the exhibits to the
14 jury)

15 BY MR. HARDY:

16 Q Associated with that wound, did you retrieve a
17 projectile?

18 A Yes, sir.

19 Q And what did you retrieve?

20 A A small caliber jacketed lead bullet.

21 Q And is that denoted on your records by any way?

22 A Yes. It was, it was inscribed "P".

23 Q Would you look at these two and tell me which one
24 you're referring to?

25 A We're talking about this bullet, small caliber jacketed

1 lead bullet.

2 Q That's --

3 A Number one here and my inscribed number there.

4 Q That's number 157?

5 A Yes. Um-hum.

6 MR. MEARS: One fifty --

7 MR. HARDY: Seven.

8 A And I've inscribed the base of the bullet with my
9 initial "P".

10 Q Okay. Is that what you retrieved from Mr. --

11 A Yes.

12 Q -- Slysz?

13 A From the frontal portion of the left side of his brain.

14 Q Now, the other injury, where was it, please, sir?

15 A The other injury was placed on the left temple,
16 approximately here (indicating). The entrance wound, the
17 entrance wound was surrounded by scratching or stippling of the
18 skin, very sparse, which means that the muzzle, the target was
19 closer, in my opinion, at this site where some of the gunpowder
20 struck the skin and scratched it but not, did not imbed in the
21 skin.

22 Q I show you these photographs, please, sir: 141, 140,
23 145 and 146, please, sir. If you could look at those.

24 A It's the photograph of the decedent, left side of his
25 face. About right in here (indicating) there's an entrance

1 wound. That's approximately here (indicating). There's a little
2 scratching, very vague scratching on his skin, stippling of the
3 skin surrounding the entrance wound.

4 Q Yes, sir. Next photograph? Are they all --

5 A They're all the same with different distances.

6 Q Different views?

7 A Different views of the same.

8 Q Are they fair and accurate representations of the
9 stippling as you referred to?

10 A Yes, sir.

11 Q And you're saying that that means that the gun barrel
12 would have been within six to eight inches when it was fired?

13 A Yes.

14 MR. HARDY: Your Honor, we'd offer 141, 140, 145 and
15 146 into evidence.

16 MR. MEARS: Your Honor, we have the same objection
17 with regard to the duplicative nature. I believe 146 and
18 140 are the same photographs.

19 THE COURT: Mr. Hardy, if I could see those, please,
20 sir?

21 MR. MEARS: Other than that, the duplication, I'd
22 ask the Court to look at 146 and 140.

23 THE COURT: I beg your pardon?

24 MR. MEARS: Just 146 and 140 I believe are the same
25 photograph. We would object to all of them on the basis

1 that they're duplicative and do not go to any issue that,
2 any evidence that's at issue in this particular case.

3 THE COURT: Gentlemen, after reviewing the photographs,
4 I think there may be, there may be some sufficient
5 differences in the photographs themselves, that one may,
6 may possibly depict something that another does not. So
7 I'll allow all of them in over objection.

8 MR. HARDY: Ask that he be allowed to step down,
9 please, Your Honor?

10 THE COURT: Yes, sir.

11 (Witness steps down from witness stand)

12 BY MR. HARDY:

13 Q First, referring to 145 and 140, Doctor, if we could
14 start down here. Could you show them what you're talking about
15 in the pictures with the stippling?

16 A See, the entrance wound is right here (indicating).
17 And there's little small abrasions, little scratching of the
18 skin. They're sparse around the entrance wound. It's the same
19 on this one here (indicating). You can see the little scratches
20 of the skin, little small abrasions of the stippling from the
21 gunpowder hitting the skin but not sticking in the skin, just
22 scratching it. You can see small abrasions, little scratches
23 around the entrance wound where the gunpowder struck but did not
24 stick into it. It abraded the skin. The same way with this one
25 here (indicating). You can see it down below. Again, you can

1 see the small minute abrasion, scratches around the entrance
2 wound here where the gunpowder had struck but did not stick in
3 the skin. And the same way with the other.

4 Q The same as these other two photographs?

5 A Yes.

6 Q Could you come around --

7 A I think we can see it the best with this one here
8 (indicating). Little scratches around the entrance wound, little
9 small abrasions where the gunpowder sticks into, falls off, but
10 scratches the skin.

11 Q Thank you, Doctor. Take your seat again, please, sir.

12 A (Witness returns to the witness stand)

13 Q 142 here?

14 A This is again a photograph of the decedent prior to
15 autopsy in the examining room on the examining table still
16 clothed.

17 Q That just shows how he was received by ya'll?

18 A Yes. Yes.

19 Q Weighed, weighed him and took his height?

20 A Yes, sir.

21 Q Is it a fair and accurate representation?

22 A Yes.

23 MR. HARDY: Offer 142, please, sir.

24 MR. MEARS: No objection.

25 THE COURT: It's admitted without objection.

1 BY MR. HARDY:

2 Q Now, this second wound to the side of the head, can you
3 tell us the flight of that one?

4 A The bullet, of course, perforated the skin in the
5 scalp, skull and went through the brain and ended up going out of
6 the skull on the back side of the head, the occipital region and
7 just ending up in the scalp. In other words, it went from left
8 to right, front to back and a slightly downward trajectory, going
9 through major portions of vital centers in the brain, in the
10 front to back, left to right and downward pattern.)

11 Q Did both bullets perforate the brain?

12 A Yes.

13 Q Tear the brain?

14 A Yes.

15 Q Were both wounds lethal?

16 A In my opinion; yes.

17 Q Did you retrieve a projectile from the --

18 A Yes; I did.

19 Q -- that one?

20 A Yes.

21 Q I show you Number 140, excuse me, 158 and ask you if
22 you can identify that for me, please, sir?

23 A This is number two. This bullet is also, on the base
24 of the bullet it has my initials of "P. J." on it for, for my
25 identification purposes. But the container is labeled with the

1 case number, my writing, and number two, meaning the bullet was
2 taken out of the back of the scalp.

3 Q Both of those items, 157, I believe, and 158, were
4 turned into the crime lab after you retrieved them --

5 A Yes.

6 Q -- from his body?

7 A Yes. It was turned into the Ballistics Section.

8 Q For further analysis?

9 A Yes.

10 MR. HARDY: Your Honor, we'd offer 157 and 158 into
11 evidence.

12 THE COURT: What numbers, Mr. Hardy?

13 MR. HARDY: 157 and 158, the bullets.

14 THE COURT: Which one is 158?

15 MR. HARDY: The second one he just testified about.

16 THE COURT: I'm sorry. I misunderstood. I thought
17 you said 152.

18 MR. HARDY: No, sir. It's 148. Excuse me. 158.

19 Excuse me. 157 is the first and 158 is the second.

20 Q Is that correct, Dr. Parker? 157 is the first one?

21 A Yes.

22 Q And 158 is the one that went through the side of the
23 head?

24 A Yes.

25 MR. HARDY: Excuse me.

1 MR. MEARS: No objection, Your Honor.

2 THE COURT: It's admitted without objection.

3 BY MR. HARDY:

4 Q What was the cause of death, Doctor?

5 A Gunshot wounds of head with the resulting injuries.

6 Q Either one of them, one of them would be death, cause
7 death?

8 A Yes; in my opinion. Yes.

9 MR. HARDY: He's with the Court, Your Honor.

10 CROSS EXAMINATION

11 BY MR. MEARS:

12 Q Good morning, Dr. Parker.

13 A Good morning.

14 Q Dr. Parker, I just have just a few questions with
15 regard to your finding. The -- Does the caliber of the weapon
16 have any effect on the amount of stippling that you might find at
17 the point of a contact wound?

18 A Yes.

19 Q Would it be a fair statement to say that the smaller
20 caliber weapon, the less stippling you would have?

21 A Yes. They have less gunpowder or less load.

22 Q And your opinion about the distance in which, at, from
23 which the shot was fired that struck Mr. Slys in the temple
24 would be at least affected in some manner by the caliber of the
25 weapon; is that correct?

1 A Yes.

2 Q If, if it was a .25 caliber you'd have less stippling
3 even at a closer shot?

4 A Yes; that's correct. There's less gunpowder in the
5 load.

6 Q And the stippling differs from tattooing. The
7 stippling is that the black gunpowder doesn't stay in the skin as
8 it did with tattooing; is that correct?

9 A Tattooing, in my opinion, is a bit closer to a target
10 than a muzzle distance. A bit closer.

11 Q And in this case you didn't find any tattooing. You
12 found stippling?

13 A Stippling; yes, sir.

14 Q And those are technical terms but they have some
15 significance with regard to your profession in making
16 determinations about distances between shots; is that correct?

17 A That's correct.

18 Q Okay. Now, with regard to the shot that hit Mr. Slys
19 in the front of his face, toward the glass --

20 A Okay.

21 Q -- is it possible that a smaller caliber weapon, such
22 as a .25 caliber, can be deflected fairly easily by external
23 objects on the face, such as glasses?

24 A I don't know about fairly, but I do believe it
25 deflected somewhat with the glass and the depth of penetration of

1 the gunshot wound here was not as much as the second gunshot
2 wound which makes me think it had lost some of its power prior to
3 entering the body.

4 Q So the fact that the bullet traversed from the front
5 going upward at an angle, that, that angle of entry and flight of
6 the bullet after it entered Mr. Slyszy's body would have been
7 affected by having hit his glasses; is that --

8 A It could -- Yes; it could have been somewhat affected
9 by this.

10 Q Okay. You have no way of knowing as a forensic
11 pathologist, you have no way of knowing which one of those shots
12 hit him first; do you?

13 A No. The number one and number two is just for
14 descriptive purposes only.

15 Q Okay. Would either of the shots have rendered, in your
16 opinion, rendered Mr. Slyszy unconscious upon receiving that shot?

17 A Yes. I think the one going up here (indicating the
18 eye) would be slower losing unconsciousness, but I think he would
19 have lost unconsciousness. This one here (indicating left
20 temple), he would have gone down very, very rapidly.

21 Q Would it be a fair statement to say that either one of
22 these shots would have almost immediately rendered him
23 unconscious upon being hit by either one of those projectiles?

24 A Yes. In my opinion. Not dead but unconscious.

25 Q Absolutely. He would not be pronounced dead until his

1 heart had stopped --

2 A That's correct.

3 Q -- is that correct?

4 A Yes.

5 Q But as far as rendering him unconscious, not having
6 sensations, observing or feeling sensations, he would have been
7 unconscious upon receipt of either one of those shots; is that
8 correct?

9 A Yes; in my opinion. Yes.

10 MR. MEARS: Okay. I don't have any further questions.

11 Thank you, Dr. Parker.

12 THE COURT: Any further questions of this witness?

13 REDIRECT EXAMINATION

14 BY MR. HARDY:

15 Q He said medically you're dead when your heart stops
16 pumping?

17 A Yes.

18 Q So here he would have fallen down and his heart would
19 have still been pumping?

20 A Yes. It will continue, our heart will continue to be,
21 from head injuries or bullet wounds, for a period of time. It
22 varies where the bullet went through or the injury itself. But
23 we don't die immediately. Very few gunshot wounds to the back of
24 the head, at the base of the brain to the mid brain will render
25 dead at that time. But bullets going through the brain like

1 these, we're still alive in that sense of the word with the heart
2 beating.

3 Q So he was alive until his heart quit beating?

4 A Yes.

5 Q And that accounts for the bleeding?

6 A Yes.

7 MR. HARDY: Okay.

8 RECROSS EXAMINATION

9 BY MR. MEARS:

10 Q Along those same lines, Dr. Parker. Do wounds to the
11 head tend to produce more blood than other type of wounds?

12 A I think that's hard to say, uh, really hard to say.
13 I'll answer it like this. The heart keeps pumping and you'll
14 keep bleeding as long as the heart keeps pumping. You could have
15 a wound in another place and it'd be immense --

16 Q Depending upon whether it hits an artery or that sort
17 of thing?

18 A Yes. Yes.

19 Q The fact that there was a significant amount of blood,
20 you didn't go to the crime scene so --

21 A No.

22 Q -- you didn't see that? But assume for my question
23 that there was a significant amount of blood on the floor where
24 Mr. Slyszy was lying. That would indicate that his heart had
25 continued to pump even though he was unconscious; is that

1 correct?

2 A Yes. In my opinion; yes.

3 MR. MEARS: Thank you, sir.

4 THE COURT: Gentlemen, may this witness be excused?

5 MR. HARDY: I think he needs to go on back to Macon
6 and go to work, Judge, if he could, please.

7 THE COURT: You are excused.

8 Call your next witness, please.

9 MR. HARDY: Walter Seitz, please.

10 Thank you, Doctor.

11 THE COURT: Good morning. Have a seat right here,
12 please, sir.

13 If you would raise your right hand?

14 Do you solemnly swear or affirm that the evidence that
15 you shall give this Court and this jury in the matter now
16 pending before this Court shall be the truth, the whole
17 truth and nothing but the truth, so help you God?

18 MR. SEITZ: I do.

19 THE COURT: Mr. Hardy?

20 WALTER SEITZ

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. HARDY:

24 Q What's your name, please, sir?

25 A Walter Seitz.

1 MR. HARDY: Before we even get started, Judge.

2 Q Mr. Seitz, you've had a medical problem about a, ten
3 days ago?

4 A I had a heart attack.

5 Q And are you -- How are you feeling today? We want you
6 to be --

7 A I'm feeling pretty good.

8 Q You feel okay to testify?

9 A Yes; I do.

10 Q You feel okay --

11 A Yes; I do.

12 THE COURT: If at any point in time during your
13 examination that you feel that you need to take a break
14 for any reason or you feel that you're having a problem
15 of some type, please let me know immediately so that we
16 can address that.

17 BY MR. HARDY:

18 Q Any time that you feel that we're asking you too much,
19 just tell us to stop. We want -- Your health is the most
20 important thing, Mr. Seitz. Okay?

21 A Okay.

22 Q Tell us what your name is, please, sir?

23 A Walter Seitz.

24 Q Let's pull the mike up to you a little bit more.

25 A Walter Seitz.

1 Q And, Mr. Seitz, I think you had a heart attack a week
2 ago Sunday?

3 A Yes, sir.

4 Q And you were in the hospital until, like, last
5 Wednesday; is that correct?

6 A Yes, sir.

7 Q And you're under, still under Dr. Karras' care?

8 A Yes; I am.

9 Q And you have been discharged and you're trying to
10 recuperate at the present time; is that correct?

11 A Yes, sir.

12 Q But you feel okay today?

13 A Yes; I do.

14 Q All right. Good. Back on April the 10th of 1994, Mr.
15 Seitz, where were you working, please, sir?

16 A At Jack Rabbit Foods on W. Jackson.

17 Q What did you do for Jack Rabbit Foods?

18 A I worked on the 11:00 to 7:00 shift as a night clerk.

19 Q And were you working that particular night?

20 A Yes, sir; I was.

21 Q How long did you work for Jack Rabbit?

22 A Altogether about six years.

23 Q And were you the only one working that particular
24 night?

25 A Yes; I was.

1 Q And could you describe the area from your store over to
2 the Junior Food Store?

3 A It's just a clear sight across a five lane highway.

4 Q Does it have, did it have glass in the Junior Food
5 Store front?

6 A Yes. There's glass in front of the Junior Food Store
7 and my store is surrounded with glass. And it's like looking at
8 two TV sets in the night.

9 Q About that time of night, 3:30 or so, is there much
10 traffic out usually?

11 A No. Very quiet.

12 Q About 3:30 on that night did anything happen?

13 A Yeah. I was outside emptying the trash bags and --

14 Q Where were you outside?

15 A Outside of my store.

16 Q Where, where? Which side of your store were you on?

17 A In the front of the store.

18 Q That would have been where?

19 A Right in between me and Junior Foods.

20 Q Is that near the 319 there, the roadway?

21 A 319, right. Um-hum. 319 roadway.

22 Q You're talking about garbage cans, the little ones or
23 the big ones or what?

24 A Little ones.

25 Q What? You were just trying to keep awake, I guess, or

1 keep busy?

2 A No. It's my job to empty the trash bags.

3 Q All right. So what happened when you were emptying the
4 trash bags?

5 A I was emptying the trash bag and I heard a sound. It
6 was crack, crack in the night which I identified in my mind as
7 small caliber gunshots.

8 Q How close where the two crack, cracks together?

9 A Just bang, bang.

10 Q Just like that (claps hands together twice)?

11 A Like that.

12 Q What'd you do then?

13 A Then I, I looked up and looked around and I seen
14 someone running around inside of the Junior Food Store.

15 Q Did you see somebody going from the left side of the
16 store to the right side of the store?

17 A Yes.

18 Q Could you describe that individual?

19 A All I seen was a light skinned black.

20 Q And what, where'd did he go from the --

21 A He was running from where the clerk was to the back of
22 the store.

23 Q What happened then?

24 A I went inside my store keeping my eye on Junior Foods
25 because I wanted to make sure I could see what was happening.

1 And my store is all glass so I never lost sight of the store. I
2 went back inside, picked up the phone and dialed 911 and I
3 identified myself to the police and told them that I'd heard some
4 gunshots coming from the Junior Foods and that there were people
5 running around inside the store and that I did not see a clerk or
6 anybody.

7 Q What'd you observe then?

8 A I, I observed a, a light skinned male about six foot
9 tall, two hundred and twenty pounds.

10 Q The same one you had saw him running from the front --

11 MR. MEARS: Objection --

12 A I assume that --

13 MR. MEARS: Objection.

14 THE COURT: Excuse me.

15 MR. MEARS: The question is leading, Your Honor.

16 THE COURT: Sustained.

17 BY MR. HARDY:

18 Q Had you seen that one before?

19 A I -- All I can say is I, I assumed it was the one I'd
20 seen running to the back. But this man came out from the back,
21 out through the store and he was carrying two twelve packs of
22 beer.

23 Q Where'd he run to?

24 A And he walked across the front of the store onto the
25 little sidewalk there and around the back of the store.

1 Q Facing the store, that would have been which way?

2 A He was going from -- While I was facing the store he
3 was going from my left to my right and around the back of the
4 store on Pinetree.

5 Q Your right would have been this way (indicating)?

6 A Yes.

7 Q Facing the Junior Food Store?

8 A Yes.

9 Q What about the other individual? Did you see another
10 individual?

11 A The other individual, I still hadn't seen.

12 Q Yes, sir.

13 A And because the only area in the Junior Foods that I
14 couldn't see is where the clerk was.

15 Q So, did you ever see a --

16 A That's a blind spot in the store. That's the only part
17 in the store I couldn't see from my vantage point.

18 Q Did you see another individual?

19 A Now, after the first one had come out and gone, a
20 second black male, thinner in stature, about a hundred and
21 eighty-five pounds, about six foot tall, and darker in complexion
22 and thinner, came out and stood in the doorway looking back
23 inside like he was saying goodnight to the clerk.

24 Q Which way did he go?

25 A And then he slowly meandered across the sidewalk in the

1 same direction as the other person, around the back of Junior
2 Foods.

3 Q So the darker of the two came out second?

4 A Yes, sir.

5 Q And was he shorter or taller?

6 A That I'm not sure of, sir. They were about equal
7 height, again, within inches of each other.

8 Q Was that here in Thomas County, Mr. Seitz?

9 A Pardon?

10 Q Did all that happen here in Thomas County?

11 A That's all that happened that I know of, sir. There
12 was --

13 MR. HARDY: Thank you. He may have some questions.

14 Q One other thing. He's going to ask you, Mr. Mullins,
15 the policeman, were you related to him or just know him well?

16 A He's, he's the father of my grandchild.

17 Q Does that have any bearing on your testimony?

18 A No, sir.

19 Q You've moved, I think, since this happened, since your
20 heart attack?

21 A Yes, sir. I live in New Jersey now.

22 Q That's where you're going to try to recuperate?

23 A Yes, sir. I'm going to recuperate; yes, sir.

24 Q You're going back there when this case is over?

25 A Yes; I am.

1 MR. HARDY: Thank you.

2 THE COURT: Mr. Mears? Mr. Bryant?

3 MR. BRYANT: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. BRYANT:

6 Q Good morning, Mr. Seitz.

7 A Good morning.

8 Q How are you?

9 A Just fine.

10 Q Okay. We'll try to get you out of here as quick as we
11 can. Okay?

12 A Okay.

13 Q We met on yesterday, I believe; is that correct?

14 A Yes, sir.

15 Q Okay. I wanted to just make sure I understand a couple
16 of things that you said. One was that you said that there was --
17 the only area in the store that you could not see from where you
18 were inside your store was the area where the clerk was?

19 A Yes, sir.

20 Q There's a blind spot there?

21 A It was. It's a concrete wall there and I can't see
22 through the concrete.

23 Q Okay. And the distance from your store over to Junior
24 Foods is, first of all, it's across what you described as a five
25 lane highway, and would that distance be like the length of a

1 football field, something like that?

2 A I, I described it in my own mind as being about a half
3 a length of a football field, which other people have corrected
4 me. But that's what I assumed it to be.

5 Q Okay. Some people think it's a football field and some
6 think --

7 A Right.

8 Q You think it was about half?

9 A Right.

10 Q Okay. But anyway, it's -- they're not next door.
11 They're across the street, across that four lane, five lane
12 roadway --

13 A Across the street, five lane road.

14 Q Okay. Now, you indicated that you saw two people from
15 that distance and you've described them. One of whom was a light
16 skinned black person who had the beer?

17 A Yes, sir.

18 Q Came out and that person sort of left very quickly.
19 The second person that you say you saw was another black male who
20 came of the store and you said he was a little darker in
21 complexion between the two?

22 A He was very much darker than, complexion than the other
23 two -- than the other person and thinner.

24 Q Okay. So that we had one person who was very dark, in
25 your opinion, and another person who was somewhat lighter in

1 complexion?

2 A Yes, sir.

3 Q Okay. And that's the only description that you had of
4 either of those individuals? That's exactly what you told the
5 police when they came; is that correct, sir?

6 A Yes, sir.

7 Q Okay. And I believe that Mr. Hardy asked you the other
8 question I was going to ask you, so I think that's all I have.
9 Oh, one, just one second.

10 In your description to the police, do you recall telling
11 them that the person, or one of the persons, I believe it was the
12 one who was somewhat stocky built, had on dark pants and dark
13 shirt?

14 A That was the second person that came out of the store.

15 Q Okay. And what about -- You also -- You described two
16 individuals.

17 A And the person carrying the beer was the khaki pants
18 and a light colored shirt.

19 Q Okay. In your description to the police, are you
20 certain you didn't tell them it was a light shirt and dark pants
21 and a cap?

22 A Uh-uh (negative).

23 Q So if the police officer took that down, he would be in
24 error?

25 A I, you know, I just think -- All I'm going by is what I

1 remember I see, is that the man --

2 Q And I recognize, sir, that this has been more than a
3 few years ago?

4 A A few years back.

5 Q But if, in fact, the police report indicated that you
6 had said it was a light shirt, dark pants that these individuals
7 had on, that is both of them had on dark pants, does that jog
8 your memory in any way?

9 A No.

10 Q And I believe you indicated that you could not tell
11 anything about the ages of any of these individuals other than
12 they were perhaps somewhere between twenty-five, maybe forty, is
13 what I think you told me yesterday?

14 A Right.

15 Q Do you remember saying anything about a cap on anybody?

16 A I don't remember; no, sir. I'm sorry.

17 Q Did either of the individuals have on shorts that you
18 can remember?

19 A Not that I seen; no, sir.

20 Q Are you sure -- when you spoke to the police officers,
21 I believe you indicated to them that you had -- the person had on
22 dark shorts. Do you recall telling the police that?

23 A No; I don't.

24 Q Do you remember which police officer you spoke with?

25 A Several. I believe it was Lt. Jackson, was one of

1 them, I think. I'm not sure. It's been quite some time now.
2 There was a whole bunch of police officers on the scene.

3 Q Okay. Did, did any police officer you spoke with, did
4 that include the first officer who arrived and you described to
5 him what had happened?

6 A Well, he arrived at Junior Foods. My store is across
7 the street. Now, I'm still operating, you know, a business while
8 all this is going on.

9 Q So you didn't go over there. They came over to you?

10 A I had to wait until some of my superiors came in, come
11 in the store so I could go talk to them.

12 Q Okay. And you recall speaking to several police
13 officers that night, you just don't remember which ones?

14 A Yes, sir.

15 Q Okay. Did you ever speak with a detective that you can
16 remember?

17 A I believe so, but I don't remember which one.

18 Q All right. And are you saying then that you did not
19 tell any of them that the person had on dark shorts?

20 A I don't remember ever saying that anybody had on any
21 dark shorts. I don't remember ever seeing any dark shorts.

22 Q Okay. And you don't recall telling them that both of
23 these individuals, that one of the individuals was stocky -- You
24 do recall that you said that one of them was sort of stocky, over
25 two hundred pounds --

1 A Um-hum (affirmative).

2 Q -- that you described? And the other individual was a
3 little, was thinner?

4 A Yes, sir.

5 Q And that they were both black males?

6 A Yes, sir.

7 Q One was a very dark complexioned fellow and the other
8 one was kind of light?

9 A Yes, sir.

10 MR. BRYANT: Okay. Thank you, sir.

11 THE COURT: Anything else of this witness, gentlemen?

12 MR. HARDY: I ask that he be allowed to go so he can
13 rest, Your Honor.

14 THE COURT: May this witness be excused?

15 MR. BRYANT: Yes, sir.

16 THE COURT: Mr. Seitz, you are excused. You're free
17 to go.

18 MR. SEITZ: Thank you.

19 THE COURT: Thank you.

20 Who's your next witness, Mr. Hardy?

21 MR. HARDY: Tina Washington.

22 Take a seat right up there.

23 THE COURT: Ms. Washington, if you would raise your
24 right hand, please, ma'am?

25 Do you swear or affirm that the evidence you'll be

1 giving this Court and this jury in the matter now pending
2 before the Court shall be the truth, the whole truth and
3 nothing but the truth, so help you God?

4 MS. WASHINGTON: I do.

5 THE COURT: Mr. Hardy?

6 KATINA WASHINGTON

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HARDY:

10 Q Good morning.

11 A Good morning.

12 Q What's your name, please?

13 A Katina Washington.

14 Q And, Ms. Washington, do you live in Thomas County?

15 A Yes; I do.

16 Q How long have you lived here, please, ma'am?

17 A About eighteen years.

18 Q Back during the time frame of April, March, April, May
19 of 1994, where were you living, ma'am?

20 A In Cherokee Projects.

21 Q Is the mike on good? It's kind of hard to hear back
22 here. Do you want to get a little closer to it? Okay.

23 Where were you living in Cherokee, ma'am?

24 A In 129-B.

25 Q And who was living there with you, ma'am?

1 A My two kids and Corey was there most of the time and
2 Gary was there a lot.

3 Q And is this a upstairs-downstairs, or downstairs, or
4 what?

5 A Upstairs-downstairs.

6 Q And where, where is your bedroom?

7 A Upstairs.

8 Q Where are your kids?

9 A Upstairs.

10 Q What's downstairs?

11 A The living room and the kitchen.

12 Q And Gary Young, you knew him?

13 A Yes.

14 Q How did you know him?

15 A I knew Gary from way back. His mother and my mother
16 was friends.

17 Q And Lisa Young?

18 A I knew her.

19 Q Where did she live?

20 A Across from me, like catty cornered from me.

21 Q In Cherokee?

22 A Yes.

23 Q Tonya Frazier?

24 A She lived behind my apartment.

25 Q Who is she?

1 A She, she's a friend.

2 Q Jeff Cromartie, did you know him?

3 A I didn't know him.

4 Q Did you know who he was?

5 A All I know is he was, uh, Gary and Lisa's cousin.

6 Q Who did he hang out with?

7 A Excuse me. Jeff, well, when I seen Jeff, he was with
8 Gary most of the time.

9 Q That was his friend? Gary?

10 A And Thad.

11 Q Is that Jeff in the courtroom this morning?

12 A Yes.

13 Q Would you point him out if you see him?

14 A Right there (indicating the Defendant).

15 Q Is that what you call him? Jeff?

16 A That's all I know him by.

17 Q How long had he been there in Cherokee?

18 A I'm not sure.

19 Q Had he been there a long time or a short time?

20 A A short period of time, I guess.

21 Q Do you know if he worked anywhere?

22 A No.

23 Q Where did he stay?

24 A With Lisa I think.

25 Q You know or you just think?

1 A I think.

2 Q Was Lisa married?

3 A At the time she was.

4 Q Did you ever see a .25 caliber gun, Tina?

5 A A little small gun?

6 Q Yes, ma'am.

7 A Yes.

8 Q Where'd you see the gun?

9 A I took it from Gary.

10 Q And that was at your apartment, 129-B?

11 A Yes.

12 Q And did you want the gun in your apartment?

13 A No; I did not. That's why I took it from him.

14 Q Now, on Thursday night at the Madison Street Deli, were
15 you there at your apartment?

16 A Yes; I was.

17 Q Was Gary there?

18 A Yes; he was.

19 Q Were the children there?

20 A Yes.

21 Q Anybody else there?

22 A Corey was there, and I think Thad was outside. I'm not
23 sure where Jeff was.

24 Q Did he come over there that evening?

25 A I think he knocked on the door and Gary walked outside.

1 Q Did Gary come back in?

2 A Yeah.

3 Q Did Gary go back out?

4 A Yes.

5 Q Do you know if he gave him anything?

6 A I gave him -- He asked me for the gun and I gave it
7 back to him.

8 Q And that's when he went back to Jeff?

9 A Before he went back outside.

10 Q Did he come back upstairs?

11 A No.

12 Q Did you know anything else happened that night?

13 A No. I had to go to work the next day so I went to bed.

14 Q Where were you working?

15 A At Kenro.

16 Q Carnell, was he around?

17 A I'm not sure.

18 Q Okay. Then the next day is Friday, then Saturday. Did
19 you see Jeff on Friday or Saturday?

20 A I can't recall. That was too far to remember.

21 Q All right. The Sunday morning, did you have occasion
22 to see them on Sunday morning?

23 A I don't know.

24 Q Over at the other girl's house? At your house?

25 A I don't recall seeing him at my house.

1 Q All right. The other girl -- Did you see any beer?

2 A I seen the beer.

3 Q Where'd you see beer?

4 A It was in the kitchen downstairs.

5 Q Where? Whose house?

6 A It was at my house in the can on my kitchen table.

7 Q What kind of beer?

8 A Budweiser.

9 Q Who did you see?

10 A When I got up, uh, Corey and Gary was on the back
11 porch, and Thad, was on the back porch drinking beer.

12 Q Did you ask them where they got the beer?

13 A Yes; I did.

14 Q Did they say anything?

15 A They asked me why I wanted to know.

16 Q Did you see Jeff?

17 A I can't recall seeing Jeff.

18 Q Did you notice anything about the cans?

19 A It was dirty.

20 Q Gary gave the gun to whom that night, that Thursday
21 night?

22 A I don't know who he gave it to. He walked outside with
23 it.

24 Q Who was outside?

25 A Jeff was standing, like, catty cornered down on the

1 sidewalk.

2 MR. HARDY: Could I have a second, please, Your Honor?

3 THE COURT: Yes, sir.

4 MR. HARDY: She's with the Court, Your Honor.

5 CROSS EXAMINATION

6 BY MR. BRYANT:

7 Q Good morning, ma'am.

8 A Morning.

9 Q My name is Carl Bryant. I'm from up in Albany. If I
10 ask you any questions you don't understand, please let me know
11 and I'll try to repeat it or rephrase it so that we do understand
12 each other. Okay?

13 A (Nods head affirmatively)

14 Q All right. You need to speak so that the court
15 reporter over here will take down -- I know you were shaking your
16 head but you --

17 A Okay.

18 Q -- have to answer out loud. Okay. Ms. Washington, I
19 understand that you have indicated that you knew Gary Young,
20 Corey Clark, I believe it is?

21 A Yes.

22 Q And that they were all friends, people that you knew?

23 A Yes.

24 Q Is that correct? You knew Thaddeus Lucas?

25 A Yes.

1 Q Ms. Frazier?

2 A Yes.

3 Q Okay. And you've indicated to the district attorney
4 you didn't know Jeff, you just knew he was the person you called
5 Jeff? You just knew he was Gary's cousin?

6 A Yes.

7 Q He wasn't somebody who was a friend of yours?

8 A No.

9 Q Okay. And you've also indicated that on the -- that
10 you don't know where he was staying. You thought, and you were
11 thinking he stayed with Lisa, but that's about all. You just
12 think that. You're not sure where he was staying?

13 A True.

14 Q Okay. And that the gun that you told us about here,
15 the person who you knew who owned or had that gun was Gary; is
16 that correct?

17 A Yes.

18 Q That would be Gary Young?

19 A Yes.

20 Q Okay. You never saw him actually give the gun to
21 anybody; did you?

22 A No; I did not.

23 Q Okay. And you said that on the night of the Junior
24 Food Store you saw Gary, Corey and Thad drinking beer and there
25 was some beer down on your kitchen table that had mud on it --

1 A I said there was a can on my kitchen table.

2 Q A can. Okay. And that you did not see Jeff?

3 A I don't recall seeing Jeff.

4 MR. BRYANT: Okay. And I think that's all I have.
5 Thank you, ma'am.

6 THE COURT: May this witness be excused?

7 REDIRECT EXAMINATION

8 BY MR. HARDY:

9 Q Do you know where Jeff was?

10 A No, sir.

11 MR. HARDY: Your Honor, I think she could be excused.
12 We know where she lives, so if she's needed we could find
13 her. If she could just leave her phone number with --
14 like everybody else.

15 MR. MEARS: We don't have any objection, Your Honor.

16 THE COURT: Ms. Washington, you are excused. You'll
17 be, you will be on call insofar as whether or not one of
18 the parties need to call you back as a witness. If you
19 would leave the bailiffs your telephone or some other
20 manner in which they can contact you if necessary. Thank
21 you.

22 Call your next witness.

23 MR. HARDY: Lisa Young.

24 THE COURT: Mr. Hardy, who is your next witness?

25 MR. HARDY: Lisa Young.

1 THE COURT: Ms. Young, if you would have a seat right
2 here, please.

3 If you would raise your right hand, please, ma'am?

4 Do you swear or affirm that the evidence you'll be
5 giving this Court and this jury in the matter now pending
6 before this Court shall be the truth, the whole
7 truth and nothing but the truth, so help you God?

8 MS. YOUNG: Yes, sir.

9 THE COURT: Mr. Hardy?

10 LISA DENISE DELANEY

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HARDY:

14 Q Good morning.

15 A Good morning.

16 Q And tell us your name, please, ma'am?

17 A My name is Lisa Denise Delaney.

18 Q And, Ms. Delaney, where do you live now, please, ma'am?

19 A With my mother at this time.

20 Q In Boston?

21 A Yes.

22 Q And I've spoken to you, I think, on several occasions?

23 A About one time.

24 Q All right. And back in April, February, March, April
25 of 1994, where were you living then, please, ma'am?

1 A Cherokee.

2 Q And how long have you lived over there?

3 A About, not even a year.

4 Q Who were you living with over there, ma'am?

5 A I was staying with my husband and my daughter.

6 Q And ya'll were all living -- Do you remember the
7 apartment ya'll were living in, the number?

8 A I think it was K -- I don't remember.

9 Q And was it a one floor or two floor?

10 A It's a one floor but it's got like upstairs.

11 Q All right. The bedrooms are where?

12 A Upstairs.

13 Q Now, and how long -- When did you get married, ma'am,
14 to Mr. Delaney?

15 A February the 16th.

16 Q Of '94?

17 A Um-hum (affirmative).

18 Q And do you, do you know Jeff Cromartie?

19 A Yes. That's my cousin.

20 Q Okay. When did he show up?

21 A About a little after I got married.

22 Q So in February of '94?

23 A Um-hum (affirmative).

24 Q Do you know where he came from?

25 A Uh, I think Philadelphia. I don't know.

1 Q Did you know he was coming?

2 A No.

3 Q So where was -- He just come and stayed with you?

4 A Yes. I told him to stay. He didn't come to stay with
5 me, but when he came to visit me I welcomed him into my home
6 because I hadn't seen him in a long time.

7 Q Did he have another bed -- Did you have another bedroom
8 or where did he stay?

9 A He slept, he slept in one, my little girl's room
10 upstairs. I was right across the hall.

11 Q Was he staying with you full time or go somewhere else,
12 or how would he go?

13 A He stayed there. Since he'd been there he was at my
14 house. He would go visit his daddy and then he'd come back to
15 the house.

16 Q So would he stay --

17 A But he barely did go anywhere.

18 Q Did he stay with his daddy any or did he stay with you?

19 A He stayed with me most of the time.

20 Q Okay. When was the last time you'd seen him before in
21 '94, February?

22 A Before '94, February?

23 Q When he showed up in February, when's the last time
24 you'd seen him before that?

25 A When's the last time I'd seen him? I've seen him ever

1 since he's been here.

2 Q No. I'm talking about prior to him showing up right
3 after you got married. When, when had you seen him before that?

4 A Oh, before I got married?

5 Q Yes, ma'am.

6 A I had seen him -- Well, I hadn't seen him but he
7 called. He used to call me.

8 Q You hadn't seen him in person for a pretty good while?

9 A Um-hum (affirmative).

10 Q Your brother, Gary, where was he living during this
11 time frame?

12 A Right across the apartments, like the apartment across
13 from where I was.

14 Q And who was he living with?

15 A Tina.

16 Q Tina?

17 A I don't know her last name.

18 Q Was Jeff working anywhere?

19 A No; not at the time.

20 Q Tonya Frazier, do you know her?

21 A Yeah.

22 Q Who is she?

23 A She stay like a girlfriend, all of our friends stayed
24 around in the neighborhood out there at the projects.

25 Q Thaddeus Lucas, do you know him?

1 A He's like a neighborhood friend.

2 Q Are you kin to him?

3 A No; I ain't kin to him.

4 Q Now, on about the 10th of April or around there, prior
5 to then, had you seen a little gun?

6 A No. I heard people talking about the gun, but I ain't
7 seen no gun.

8 Q Seen the gun in your apartment?

9 A No.

10 Q Had the gun been in your apartment?

11 A Not as I know of. I, you know, I, I be focusing on my
12 kids and stuff. I don't be, you know, like -- I used to try to
13 get Jeff to go out because Jeff ain't hardly go nowhere. He
14 ain't go nowhere. Because I had some girlfriends of mine and I
15 used to try to get him to talk to. But he mostly stayed on the
16 phone so much and he had -- I don't think he had time enough to
17 go nowhere. He --

18 Q Who did he hang out with when he hung out?

19 A He ain't hang out with -- 'cause all of us just sit
20 outside, you know, barbecued and stuff.

21 Q Was Gary his best friend?

22 A My brother?

23 Q Yes.

24 A I don't know if they're best friends. They're cousins.

25 Q Okay. Did you see any beer over there on that early

1 Sunday morning, that Saturday night, April the 10th?

2 A No; I ain't seen no beer.

3 Q Did you see any beer over at Tonya Frazier's?

4 A I don't go to her house.

5 Q You didn't see any over there?

6 A No.

7 Q Do you remember that Saturday night, Jeff talking to
8 Thad?

9 A No.

10 Q Do you remember Jeff asking him to take him to the
11 store?

12 A We was in a conversation, like, it was about 4:00 --
13 well, my next door neighbor, Kim, and her friend and my husband,
14 we all was in there, we was already in our own conversation. You
15 know, Thad was -- I don't know if Thad came by. He had just got
16 off from work.

17 Q Did Jeff ask him to take him to the store?

18 A I don't recall. I was, you know, I was talking -- we
19 was talking about church and stuff, so --

20 Q You don't remember seeing that beer and asking them
21 where they got the beer, ma'am?

22 A No. If they had some beer nuts some cans would
23 automatically been there and I ain't see no cans 'cause they
24 checked that. There wasn't no cans or nothing there. So I,
25 well, --

1 Q Over at Ms. Frazier's house, do you remember seeing the
2 beer over there?

3 A No.

4 Q Asked them where they got it from?

5 A That's -- She say stuff there. 'Cause that's stuff,
6 like, -- they was telling me stuff, you know. That's unusual
7 stuff. They was telling me, like, after they had got locked up
8 and stuff. People running and telling me stuff like that. I
9 ain't know nothing like that, nothing about that.

10 Q Did you talk to A. J.?

11 A A. J.? That's probably who you need to talk to 'cause
12 I don't know, you know, --

13 Q Did you talk to Tonya?

14 A Yeah. Tonya. Tonya told me about some other stuff.

15 Q Gary?

16 A And he ain't too much tell me nothing. Gary, like he's
17 -- me and him wasn't talking on nothing like that.

18 Q Did you ever talk to Gary a lot?

19 A Gary's my brother. Since I been over there, you know,
20 I been married and stuff. I just had got in my marriage and
21 stuff, you know. I saw him, you know. He come over about every
22 -- and borrow food, you know, stuff to cook with and stuff. I
23 always cooked and stuff for him.

24 Q Did Jeff kind of make it a problem when you'd just got
25 married, living there with another man in the house?

1 A No; 'cause I invited him in there. If I felt like
2 he -- I didn't want him in there, I wouldn't have never invited
3 him there. And, you know, he, since he's been there he left, he
4 -- he stayed on the phone. And I can vouch for that. He used
5 the phone and --

6 Q Didn't he put a little stress on your marriage, him
7 being there in the house with another man? Is that what you told
8 him?

9 A Not really. That was my husband. He ain't put nothing
10 on me. That was my husband. You know, automatically a man gonna
11 say that. But he was just like, you know, automatically a man.
12 I ain't supposed he was worried about. If I had listened to him
13 Jeff wouldn't have been in the first place. That's my blood, you
14 know. I ain't gonna turn him away like that. You know, he
15 hadn't done nothing to me.

16 MR. HARDY: Thank you, ma'am.

17 CROSS EXAMINATION

18 BY MR. MEARS:

19 Q Good morning, Ms. Young.

20 A Good morning.

21 Q Ms. Young, my name is Mike Mears. I'm one of the
22 attorneys representing Ray Cromartie, Jeff Cromartie, Ray
23 Jefferson Cromartie.

24 A Um-hum (affirmative).

25 Q When he came to visit with you in February of 1994, you

1 invited him to stay there?

2 A Yes; I did.

3 Q And did he have any relatives up in Boston? Do you
4 know?

5 A Yes. We have my mama and my nieces and my aunt, my
6 nieces. He had my sister Charlotte. He had a lot; yeah.

7 Q He didn't have -- Other than you and Gary, was anybody
8 at the Cherokee Apartments that he knew or had, that were
9 relatives that you knew of?

10 A No.

11 Q Would it be a fair statement to say that Jeff sort of
12 hung out by himself at the Cherokee Apartments?

13 A We, -- Yeah. 'Cause I used to, like I said, I used to
14 tell him to get out. I had some girlfriends of mine and my next
15 door neighbor, she was trying to holler at him. And, you know,
16 he mostly didn't go out nowhere. 'Cause I said, "Jeff, why you
17 don't go nowhere"? And he stayed on that phone 'cause I used to
18 get mad at him, 3:00 or 4:00 o'clock in the morning on the
19 telephone.

20 Q He had a girlfriend in Pittsburgh; didn't he?

21 A Yes; he did.

22 Q And Pittsburgh is where he was from?

23 A Yes.

24 Q Is that correct?

25 A And every time he talked to her on the phone, I talked

1 to her on the telephone and we got to know each other, and I'd
2 never seen her in my life, but when I talked to her on the phone
3 we got to know each other and really it seemed like I talked --
4 we'd known each other for a long time.

5 Q So the person, or the reason Jeff was staying on the
6 phone so much is because he had a girlfriend back in Pittsburgh?

7 A Yes.

8 Q And you tried to fix him up with some of your
9 girlfriends, but he stayed on --

10 A They talked to him -- Well, he was talking to 'em, you
11 know, as good friends. Or we'd barbecue, we'd sit around the
12 house. You know, the whole thing was a shock for me 'cause he
13 don't even look like the type of person that would do that, you
14 know --

15 Q Ms. Young --

16 A -- all this.

17 Q Ms. Young, did he ever date any of the friends that you
18 tried to fix him up with?

19 A Yes.

20 Q Okay. But he still was interested --

21 A Talking to his girl.

22 Q -- on Pittsburgh, talking to Pittsburgh?

23 A Yes. He was into, more interested in her than he was
24 them others.

25 MR. MEARS: Okay. I don't have any further questions.

1 Thank you, Ms. Young.

2 THE COURT: Mr. Hardy?

3 MR. HARDY: Tonya Frazier.

4 Thank you.

5 THE COURT: Thank you, ma'am.

6 May this witness be excused?

7 MR. MEARS: Yes, Your Honor.

8 MR. HARDY: Just put her on call like everybody else.

9 THE COURT: Gentlemen, let me, let me see Counsel for
10 just a moment.

11 Ms. Frazier, if you'd have a seat right here, please,
12 ma'am.

13 (Whereupon Counsel confer with the Court at the Bench,
14 during which the following transpired)

15 THE COURT: Capt. Hadley, Capt. Hadley came in a few
16 minutes ago and I think what he said was that he could
17 bring Thaddeus Lucas up this back stairway and have him --
18 I don't know if they're intending on bringing him in
19 through this door when he's called as a witness. There'd
20 been some prior discussion about him being in his jailhouse
21 attire and there were no objections from either party in
22 regards to that.

23 MR. MEARS: That's correct, Your Honor.

24 MR. HARDY: I don't know what he's wearing this
25 morning.

1 THE COURT: Now, I don't know, you know, whether or
2 not they've got him in shackles or handcuffs. I assume not.

3 MR. HARDY: Can we, you know, can I just go to the
4 door and look and see?

5 THE COURT: Before you call him as a witness, let's
6 address anything like that we need to.

7 MR. MEARS: My objection goes, my non objection goes
8 to the jailhouse attire.

9 THE COURT: I beg your pardon?

10 MR. MEARS: I'm not objecting to him being in jailhouse
11 attire. I just -- I don't think it'd be appropriate for
12 him to be in chains or handcuffs.

13 THE COURT: Unless we have some information otherwise.

14 MR. MEARS: Yes.

15 MR. HARDY: Just call this witness in and --

16 THE COURT: Is he after -- Is he next?

17 MR. HARDY: Well, he's outside. I haven't seen him
18 today. I don't --

19 THE COURT: Thank you.

20 (Conclusion of Bench conference)

21 THE COURT: Ms. Frazier, if you could raise your right
22 hand, please, ma'am?

23 Do you solemnly swear and affirm, solemnly swear or
24 affirm that the evidence you'll be giving this Court and
25 this jury in the matter now pending before this Court shall

1 be the truth, the whole truth and nothing but the truth, so
2 help you God?

3 MS. FRAZIER: Yes.

4 THE COURT: Mr. Hardy?

5 TONYA FRAZIER

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HARDY:

9 Q State your -- Pull the mike up to you a little bit.
10 It's away from you.

11 What's your name, please, ma'am?

12 A Tonya Frazier.

13 Q Ms. Frazier, back during the time period of April of
14 1994, where were you living, please, ma'am?

15 A 445 Cherokee Street.

16 Q And how long did you live over at Cherokee, ma'am?

17 A Four years.

18 Q And who were you living there with?

19 A Me and my son.

20 Q Sir -- Ma'am?

21 A Me and my son.

22 Q Okay. And how old is the child?

23 A Seven.

24 Q Seven. Was he seven back then or seven now?

25 A He's seven now. He was, uh, he was four back then. Four.

1 Q Back then did you know who Jeff Cromartie was? Had you
2 seen him around?

3 A Yes.

4 Q And where had you seen him, ma'am?

5 A Uh, just walking around the projects.

6 Q Do you know where he was staying?

7 A With Lisa Young.

8 Q Ma'am?

9 A He was staying with Lisa Young that I know of.

10 Q Where did Lisa live in relation to your house?

11 A Uh, she stayed kind of in the back. She stayed in the
12 back.

13 Q And did Lisa have any children too?

14 A Did she have any what?

15 Q Have any children?

16 A Yes.

17 Q Were they living with her too?

18 A Yes.

19 Q And did you know Thaddeus Lucas?

20 A Yes.

21 Q How did you know him?

22 A He was going with my sister Tameka.

23 Q And did you know Corey Clark?

24 A Yes.

25 Q How did you know him?

1 A He was a friend of mine.

2 Q Did all these people that we've named, were they in and
3 around the Cherokee Projects?

4 A Yes.

5 Q Gary Young, did you know him?

6 A Yes.

7 Q And how did you know Gary?

8 A From Boston. He used to stay in Boston.

9 Q Is he kin to Lisa?

10 A Yes. They're sister and brother.

11 Q And are you kin to them?

12 A No.

13 Q Where do you live now? Do you live in Thomasville or
14 Boston?

15 A Boston.

16 Q Carnell Cooksey, did you know him?

17 A Yes.

18 Q How'd you know him?

19 A From Boston. He was staying in Boston. I just grew up
20 with him and Gary. I grew up with them.

21 Q Okay. The night of April the 7th, Madison Street Deli,
22 do you know anything about that?

23 A No.

24 Q Okay. April, it'd be the 8th, the 9th, the 10th, be
25 Saturday, on Saturday night did you see Corey and Gary, Jeff or

1 Thad?

2 A Yeah. They was around in the projects and stuff and
3 they came to my house later that, that night.

4 Q Before they came to your house later that night, what
5 were they doing?

6 A Just standing around the projects, just standing
7 around.

8 Q Talking?

9 A Yes. Just standing out there. They was talking, I
10 guess.

11 Q Where were they talking? What do you mean? Out on the
12 street?

13 A They was just out there laughing and just out there,
14 standing out there talking.

15 Q And that would have been Corey, Jeff. Who else?

16 A And Thad.

17 Q Do you know where Thad was working?

18 A Domino's.

19 Q This was after he'd got off work?

20 A I don't know if he had worked that day or what, but I
21 had, I had -- I hadn't seen him that day, but I seen him later on
22 that night though.

23 Q All right. So before you saw him later on that night,
24 did you see the other people together?

25 MR. MEARS: Your Honor, I'm going to object to the

1 form of the question. Identify the other people. We've
2 gotten several names, and I think it's misleading to --

3 THE COURT: Rephrase your question, please, sir.

4 BY MR. HARDY:

5 Q Before Thad got off work did you see Mr. Cromartie, Mr.
6 Clark, Mr. Young?

7 A Um-hum (affirmative).

8 Q Where were they?

9 A They was all standing outside.

10 Q What were they doing?

11 A They was just talking like they usually be out there
12 talking and joking around.

13 Q Carnell Cooksey, did you see him?

14 A No; I didn't see him.

15 Q All right. When Thad got off work, did you see all of
16 them together? Gary, Thad, Corey?

17 A Uh-uh (negative).

18 Q Where were you then?

19 A I was, I was in the house.

20 Q Okay. Later on did you see them again?

21 A Um-hum. Thad -- Yeah, later on I did.

22 Q Where'd you see them?

23 A Later on they had came to my house.

24 Q Who came to your house?

25 A It was Jeff, Corey and, uh, Gary.

1 Q What did they have?

2 A They had some beer.

3 Q The Jeff you're talking about, is he in the courtroom
4 this evening -- this morning?

5 A Yes.

6 Q Would you point him out if you see him?

7 A Right there (indicating the Defendant).

8 Q Where did they come?

9 A They come to my house.

10 Q And what'd they have?

11 A Some beer.

12 Q What kind of beer?

13 A Budweiser in the can.

14 Q Did you see anything else?

15 A (Shakes head negatively)

16 Q How many were there?

17 A It was a twelve pack.

18 Q What were they doing?

19 A They was just sitting in the kitchen. I had, I had,
20 uh, went back to bed.

21 Q Did you ask them about the beer?

22 A Yeah. I just, like, where did ya'll get the beer from
23 this time of night, and they didn't say nothing so I just went
24 back to bed.

25 Q Who did you ask that to?

1 A All of them.

2 Q Did anybody say where they got it?

3 A No.

4 Q Did you notice anything about the beer?

5 A No. It just had dirt on it.

6 Q Do you know if they had any beer anywhere else?

7 A No.

8 Q Did you get any of the beer to drink yourself?

9 A Yes. One.

10 Q Where'd you go?

11 A Back in the room.

12 Q Were you in there where they were?

13 A (Shakes head negatively)

14 Q Did they stay or did they leave?

15 A They left.

16 Q Do you know where they went?

17 A No.

18 Q Do you know where -- Did you see Carnell Cooksey?

19 A He was asleep. He was drunk. He was in my house

20 asleep drunk.

21 Q Did he ever leave your house that Saturday night?

22 A He left. Somebody took him out the house.

23 Q Did Carnell wake up when they brought the beer there?

24 A No.

25 Q Why was he at your house?

1 A Who? Carnell? He just come over there like that. He
2 used to come over there.

3 Q So you know him too?

4 A Um-hum. I grew up with Carnell.

5 MR. HARDY: She's with the Court.

6 CROSS EXAMINATION

7 BY MR. MEARS:

8 Q Good morning, Ms. Frazier.

9 A Morning.

10 Q Ms. Frazier, my name is Mike Mears. I'm one of the
11 attorneys representing Ray Jefferson Cromartie. If you don't
12 understand any of my questions, please ask me to repeat them.
13 Okay?

14 A Um-hum (affirmative).

15 Q Now, would you please pull the microphone over just a
16 little bit because I'm having trouble hearing you. We'd like
17 everyone to hear your responses. Okay?

18 A Um-hum (affirmative).

19 Q And if you will, if you don't mind saying yes or no so
20 that this gentleman here can record what you say.

21 A Okay.

22 Q Thank you. What is your sister's name?

23 A Tameka Frazier.

24 Q Tameka Frazier?

25 A Um-hum (affirmative).

1 Q And she was Thaddeus Lucas' girlfriend; is that
2 correct?

3 A Yes.

4 Q Are, are they still together? Do you know? Is she
5 still his girlfriend?

6 A No.

7 Q Okay. But in April of 1994 Thaddeus and your sister
8 were boyfriend and girlfriend; is that correct?

9 A Yes.

10 Q About how much time did you -- how often did you see
11 Thaddeus and your sister Tameka together?

12 A She was, uh, she was working. She was mostly working.
13 But Thad was always traveling with her. But they was, like,
14 sometime, not all the time.

15 Q Where did Tameka live at that time?

16 A She was staying with me at that time.

17 Q She was living with you at Cherokee Apartments?

18 A Yes.

19 Q So Thaddeus would be in and out of your apartment to
20 see your sister; is that correct?

21 A Yes.

22 Q Now, at that time Corey Clark was your boyfriend; is
23 that correct?

24 A Yes.

25 Q How long had you and Corey been boyfriend and

1 girlfriend?

2 A Um, about, about a year. Yeah; about a year.

3 Q Ya'll had been going together for a pretty good period
4 of time in April of 1994; is that correct?

5 A Yes.

6 Q How often would you be with, with Corey? Did he come
7 by your apartment a lot?

8 A Yes.

9 Q Where did he live? Do you, do you remember?

10 A With his mother.

11 Q And where did she live?

12 A She was staying on Fletcher Street.

13 Q Okay. But Corey spent a lot of time at Cherokee
14 Apartments visiting with you; is that correct?

15 A He visited me and Tina Washington.

16 Q Okay. He was friends with Tina Washington too; wasn't
17 he?

18 A Yes.

19 Q Did he, did he call Tina sister? Did you ever hear him
20 calling her his sister?

21 A Yes. Sometimes he did; yes.

22 Q Sort of pretend sister?

23 A Um-hum (affirmative).

24 Q Do you know why he called her his, his sister?

25 A No.

1 Q Okay. Now, you said you grew up with Gary Young; is
2 that correct?

3 A Yes.

4 Q Did ya'll go to school together, you and Gary? Were
5 ya'll in school at the same time?

6 A No.

7 Q Gary is a little bit older than you?

8 A Yes.

9 Q Did you know Gary's family?

10 A His sister, Lisa.

11 Q Lisa?

12 A Um-hum (affirmative).

13 Q Anyone else in his family, did you know them?

14 A No.

15 Q Okay. Now, Ms. Frazier, were you present in the
16 Cherokee Apartments on April the 12th, the night that the
17 shooting took place out there?

18 A Yes.

19 Q Where were you at, during that night?

20 A I was in the house. Talking about the shooting that
21 happened in Cherokee?

22 Q Yes, ma'am.

23 A First, I was outside; then I went in the house.

24 Q Did you see any of the people that were involved in
25 that shooting?

1 A I just seen some boys shooting but it was, it was dark.
2 I just went in the house when they started shooting.

3 Q Did any of those boys from west side come to your
4 apartment looking for Corey?

5 A No. They ain't say who they was looking for. They
6 just came to my house.

7 Q They came to your apartment?

8 A Um-hum (affirmative).

9 Q Did they put a gun in Corey's face?

10 A No.

11 Q You didn't see that?

12 A No; because he, Corey was sitting there in the chair.
13 They just had (unintelligible).

14 Q Okay. But you were there the night that the people
15 came over?

16 A I was there.

17 Q Did you hear who they were looking for?

18 A No.

19 Q Do you recall what time of the night you saw Gary
20 Young, and you said, I think you said Gary and Jeff and Thad and
21 Corey, with the beer?

22 A That night? It was late. About, like, about like
23 3:00, about 3:00 something.

24 Q Earlier that night had you seen anyone -- did you know
25 of anyone leaving Cherokee Apartments, I'm talking about before

1 3:00, to go off to the store to get some beer and then come back?

2 A No.

3 Q Had Carnell Cooksey been drinking beer around you,
4 around your apartment that night?

5 A When he came he was already like drunk and so he just
6 went to sleep.

7 Q Okay. And you didn't hear about anyone going to get
8 beer before, say, 3:00 or, 3:00 o'clock?

9 A No.

10 Q Okay. Are you still friends with Corey?

11 A I haven't talked to him since, you know, they locked
12 him up.

13 Q At the time in April of 1994, were ya'll planning to
14 make your relationship permanent?

15 A No.

16 Q But you were close to him; is that correct?

17 A Yes.

18 Q Ya'll had all grown up together; hadn't you?

19 A Me and Corey?

20 Q I mean, all of the friends that you had at that time.
21 Ya'll had been together for a while; hadn't you?

22 A Oh, yes.

23 Q You didn't know Jeff; did you, other than just to see
24 him around the projects?

25 A No.

1 MR. MEARS: Okay. Thank you. Nothing further.

2 THE COURT: Any further questions of this witness?

3 MR. HARDY: If she could just leave her number too,
4 please, Your Honor.

5 THE COURT: You are excused.

6 Ladies and gentlemen, prior to our next witness I've
7 got a very short matter to address. This looks like a
8 good opportunity for us to take our mid morning recess.

9 We're going to recess for about fifteen minutes.

10 Everyone remain seated while this jury retires.

11 (Whereupon the jury retires from the courtroom,
12 after which the following transpired)

13 THE COURT: Mr. Hardy, I believe that you --
14 gentlemen, if you could just step up to the bench for
15 a moment? Well, I believe you needed to inquire as to
16 whether or not Mr. Lucas is appropriately suited to come
17 inside.

18 MR. HARDY: He's got on civvies, Judge.

19 THE COURT: All right, sir. That's fine.

20 Gentlemen, we're going to take about a ten or fifteen
21 minute recess and then Mr. Lucas will be the next witness.

22 Mr. Hardy, can you refresh my recollection now in
23 regards to Mr. Lucas and Mr. Clark, the co-defendants.
24 Their cases have already been disposed of; is that correct?

25 MR. HARDY: They've both pled on accusations to

1 Robbery, Hindering the Apprehension. Mr. Clark was
2 sentenced by you to twenty-five years. And Mr. Lucas was
3 given twenty, serve ten and maybe five concurrent on the
4 Hindering. I think that's the way it was.

5 THE COURT: Did I sentence Mr. Lucas?

6 MR. HARDY: Yes, sir.

7 THE COURT: Why the differences in the sentences?

8 MR. HARDY: He was under a sentence already. You gave
9 him concurrent time. He was just the driver. He never went
10 in the store or anything. I don't know why you sentenced
11 him -- you got a PSI and --

12 THE COURT: I recall a PSI on Mr. Clark --

13 MR. HARDY: You did a PSI on both of them.

14 MR. MEARS: Could we have the PSI as far as --

15 THE COURT: Excuse me. Sir?

16 MR. MEARS: Could we have the PSI?

17 THE COURT: I don't have the PSI.

18 MR. HARDY: They don't give them to us.

19 MR. MEARS: Could I ask that the PSI be made a part of
20 this record and that the Court -- I know you reviewed it at
21 one time, Judge, but I ask that to be made a part of Brady
22 review and make it a part of the record so that later on we
23 don't have to go looking for the PSI. When you're on the
24 Supreme Court and I'm retired that --

25 THE COURT: No, sir; I won't -- For several reasons

1 I'll never be there, some of which I'm sure have become
2 obvious.

3 MR. MEARS: But if I could, I think it'd be appropriate
4 for the PSI to be a part of this record as a part of the
5 Brady material since he was a co-defendant in the case.

6 THE COURT: I'll think about that.

7 MR. MEARS: Okay.

8 THE COURT: Do you recall the other, what other
9 sentence he was under at that time?

10 MR. MEARS: Was Lucas under any other -- I don't think
11 Lucas was under any other sentence.

12 MR. HARDY: Yeah; he was under a sentence.

13 THE COURT: For some reason I think I've gotten Lucas
14 mixed up in my mind with somebody I had had in Brooks County
15 at one time.

16 MR. MEARS: Lucas committed aggravated battery on his
17 girlfriend, girlfriend. He battered her pretty badly.

18 THE COURT: Well, we tried that case.

19 MR. MEARS: It went to the jury. I think he sort of
20 acted out in front of the jury. He had some words for the
21 jury in front of the jury. I can share my transcript with
22 you.

23 THE COURT: We'll be in recess for about ten minutes.
24 (Whereupon the Court takes a brief recess, and upon
25 reconvening the following transpired outside the

1 jury's presence)

2 THE COURT: Mr. Hardy, we've previously addressed these
3 matters, but I just want to be absolutely sure that in
4 regards to the co-defendant's testimony, that being Mr.
5 Lucas or Mr. Clark, as I recall insofar as Mr. Clark's
6 sentencing, there were no recommendations made to the Court
7 by the district attorney's office. A pre-sentencing
8 investigation report was provided to the Court prior to the
9 sentence being imposed in that particular case --

10 MR. HARDY: That's correct on him. But I think on Mr.
11 Lucas we made a recommendation about concurrent time, but
12 not on Clark, the man in the store. I think the Court got a
13 PSI and we had a sentencing hearing before the Court and he
14 had his lawyer, Ms. Lane, there present.

15 THE COURT: In regards to Mr. Lucas, was the
16 recommendation, sentence recommendation made to the Court,
17 was that recommendation made in writing to the Court, or was
18 it made orally? Do you recall?

19 MR. HARDY: It wasn't in writing, but I remember, Your
20 Honor, I think it was the Court -- recommendation to the
21 Court and the Court could follow it or not follow it, I
22 think is the way it was couched. Mr. Andrews was his lawyer
23 and he's in the back in the courtroom.

24 THE COURT: All right. Mr. Mears, have you had an
25 opportunity to look at the transcript of the sentencing

1 hearing in Mr. Lucas' case?

2 MR. MEARS: Yes, Your Honor. I, I intend to go into
3 certain aspects of his sentencing within the bounds as the
4 Court set with regard to the understanding about whatever
5 plea agreement was there. And I don't think that'll be a
6 problem, Judge. I was going to tender the certified copy of
7 the indictment and a copy of the sentencing report into
8 evidence. And that simply spells out the years that the
9 Court sentenced him to.

10 The other matter that we addressed briefly was the
11 second offense that Mr. Lucas was sentenced for, unrelated
12 to this particular case. In December of '96 Mr. Lucas was
13 sentenced for Aggravated Assault and Aggravated Battery
14 after a jury trial and the victim in that case was his
15 girlfriend. He was on bond at the time, on bond from this
16 case. And he was indicted. And according to the court
17 records he was found guilty by the jury and the Court
18 sentenced him to terms of years on both the Aggravated
19 Battery and the Aggravated Assault charges. That, that took
20 place in, on December the 16th of 1996. That was the other
21 matter that was not related to this, for which he has been
22 convicted of a felony. I intend to introduce that
23 indictment, that is, when and where appropriate.

24 THE COURT: Now, what I understand you're intending to
25 do in regards to that, use that for impeachment purposes,

1 simply introduce the certified copy of the indictment and
2 conviction?

3 MR. MEARS: That's correct, Your Honor.

4 THE COURT: All right, sir. You had made some
5 reference earlier about the PSI in Mr. Clark's case being
6 made a part of this record. What is the purpose of that?

7 MR. MEARS: .No. Your Honor, I was just made aware by
8 Mr. Hardy in our conversation with the Court at the Bench
9 that there had been a pre-sentence investigation report
10 completed. And I believe it --

11 MR. HARDY: I think there has. I don't never see them,
12 Mr. Mears. The Judges don't let me have them or see them or
13 have anything to do with them. So that'd just be an
14 assumption on my part. He'd have to tell you whether he did
15 it. But I don't never get to see them.

16 MR. MEARS: I will make the appropriate inquiries with
17 the probation office as to whether or not the PSI report
18 exists on either Mr. Lucas or Mr. Clark.

19 THE COURT: You understand those reports are by law
20 confidential. Now, insofar as the request to make a part of
21 that report or make that report a, a part of the record in
22 this case, what would be the relevancy or the purpose?

23 MR. MEARS: If the pre-sentence investigation report
24 contained any Brady type of material or it contained any
25 information that might relate to the Defendant's

1 understanding of a possible plea or leniency or hope or
2 expectation of benefit in regard for the plea, then I think
3 it'd be appropriate for us to be given that. What I'm
4 asking -- First of all, I'll find out if there is a PSI
5 report. If there is, then I will ask the Court to review
6 that in camera. If the Court then feels that it's still
7 something that should be remain, should remain under seal
8 and not be divulged to us, that it be sealed, made a part of
9 the record for whatever review needs to be made of it at
10 some later time. I think that would be the appropriate
11 thing for me to request and for the Court to simply review
12 it in camera. And if there is anything on Brady, I
13 certainly assume that the Court would provide that to us,
14 since he is now testifying in this case. If there's any
15 information in there that would be of an impeaching or of
16 the nature that would lend the Court in its review of that
17 to suspect that there's a hope of leniency in exchange for
18 his testimony, that the Court would provide that to us.
19 Even if the Court determines that it's not, I think it would
20 be appropriate to have it placed under seal and made a part
21 of this record. And I would formally request the Court to
22 do that.

23 THE COURT: Mr. Mears, the only thing, from my
24 experience with the pre-sentence investigation report --
25 I'll certainly review it to see whether or not it reflects

1 any, any deal or anything of that nature, purported deal. I
2 do not, do not believe it did. But I'll review it for that
3 particular purpose.

4 Insofar as the other information contained therein,
5 background information, education, employment history,
6 things of that nature, and also any criminal record which,
7 of course, you would have an opportunity to get from other
8 sources. But I'll review it and make a determination at
9 that time.

10 MR. MEARS: And does the Court, does the Court think it
11 would be appropriate if you do have an opportunity to
12 conduct such a review, assuming that there is a PSI report,
13 would the Court then put it under seal and make it a part of
14 the record of this, this trial?

15 THE COURT: I'll consider that.

16 MR. MEARS: Thank you.

17 THE COURT: Your next witness is Mr. Lucas?

18 MR. HARDY: Yes, sir. He's back there.

19 THE COURT: If you'll bring the jury in.

20 (Whereupon the jury returns to the courtroom, after
21 which the following transpired)

22 THE COURT: Mr. Hardy, you may call your next witness.

23 MR. HARDY: Thaddeus Lucas.

24 THE COURT: Mr. Lucas, if you would have a seat right
25 here, please.

1 If you would raise your right hand, please, sir?

2 Do you solemnly swear or affirm that the evidence you
3 shall give to the Court and the jury in the matter now
4 pending before the Court shall be the truth, the whole truth
5 and nothing but the truth, so help you God?

6 MR. LUCAS: Yes, sir.

7 MR. HARDY: Lower your hand, please, sir.

8 THADDEUS LUCAS

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HARDY:

12 Q What's your name, please?

13 A Thaddeus Lucas.

14 Q And, Mr. Lucas, were you originally charged in this
15 case?

16 A Yes, sir.

17 Q And have you entered a plea in this case?

18 A Yes, sir.

19 Q Pull the mike up to you a little bit, if you would?

20 Maybe raise it a little bit, please, sir. Thank you, sir.

21 Have you been sentenced to prison in this case?

22 A Yes, sir.

23 Q Are you currently in prison?

24 A Yes, sir.

25 Q Where are you in prison?

1 A Leesburg.

2 Q And what was your sentence in this case? Do you know
3 what your sentence was and what you pled to?

4 A Robbery and Hindering the Apprehension.

5 Q How many years did you get?

6 A Twenty years, ten to serve.

7 Q And were you already -- Were you under another sentence
8 at the time for fighting with your girlfriend?

9 A Yes, sir.

10 Q And what sentence did you have in that case?

11 A Twenty years, ten to serve.

12 Q Did that happen a year or so after the Junior Food
13 Store?

14 A Yes, sir.

15 Q So you're currently in Leesburg, the state prison
16 there?

17 A Yes, sir.

18 Q And how long have you been in prison?

19 A About six months.

20 Q Do you know -- Where did you grow up, Mr. Lucas?

21 A Thomas County.

22 Q Did you go to school here?

23 A Yes, sir.

24 Q What school did you go to?

25 A Thomasville.

1 Q And how far did you go in school?

2 A Tenth.

3 Q And who is your father?

4 A Joseph Lundy.

5 Q Where did you grow up? Where did, where did you live?

6 A 208 W. Jerger.

7 Q 20 what?

8 A 208 W. Jerger Street.

9 Q Just about four or five blocks from here, down from the
10 courthouse?

11 A Yes, sir.

12 Q And where were you working back during the time period
13 of February of 1994, Mr. Lucas?

14 A Domino's Pizza.

15 Q And were you working anywhere else?

16 A Shoney's.

17 Q And what were you doing for Shoney's?

18 A Cook.

19 Q And what were you doing for Domino's Pizza?

20 A Delivery driver.

21 Q And what kind of car did you have?

22 A A Honda.

23 Q Do you remember what color it was?

24 A Brown.

25 Q And do you remember how many doors it had?

1 A Two door.
2 Q What kind of car was it? A --
3 A Five speed. Honda Civic.
4 Q Honda Civic?
5 A Yes, sir.
6 Q Okay. Was that your car?
7 A Yes, sir.
8 Q So how long had you been working for Domino's Pizza?
9 A Two years.
10 Q And how long had you been working for Shoney's?
11 A About a year.
12 Q So you was holding down two jobs?
13 A Yes, sir.
14 Q Where were you living then? You said with your father?
15 A Yes, sir.
16 Q And did you have a girlfriend at that time?
17 A Associate; yes, sir.
18 Q And who was that?
19 A Tameka Frazier.
20 Q Where did she live?
21 A She lived in Boston but she stayed with her sister, off
22 and on with her sister.
23 Q Do know Jeff Cromartie?
24 A Yes, sir.
25 Q And is he here in the courtroom this morning?

1 A Yes, sir.

2 Q Now, are you kin to him?

3 A I assume.

4 Q And what do you assume?

5 A Stepbrothers.

6 Q So you have the same father?

7 A Yes, sir.

8 Q Did you ever know him until you were eighteen? Never
9 heard of him?

10 A No, sir.

11 Q Is that the first time you ever met him, when you were
12 eighteen?

13 A Yes, sir.

14 Q Did you have anything to do with him -- Did he live in
15 Thomasville?

16 A About six months then after I knew him; yes.

17 Q Did he come to live with your dad?

18 A Yes, sir.

19 Q That would be over there on Jerger?

20 A Yes, sir.

21 Q Now, was he living here prior to February of 1994?

22 A He was just coming through.

23 Q Did you know that he was coming?

24 A No, sir.

25 Q And where is the first time you saw him back in

1 February, March, April of '94? Do you remember?

2 A At my father's house.

3 Q At your father's house?

4 A Yes.

5 Q Did you know he was coming to your father's house?

6 A No, sir.

7 Q Did he just show up?

8 A Yes. To me he did.

9 Q Was he living with your father some?

10 A Off and on; yes.

11 Q Where else would he be living?

12 A I assume he was over there at his cousin's house.

13 Q Who was that?

14 A Lisa.

15 Q Is she kin to you too?

16 A No, sir.

17 Q What about Gary Young?

18 A No, sir.

19 Q Do you know Gary Young?

20 A Yes, sir.

21 Q Do you know Corey Clark?

22 A Yes, sir.

23 Q How do you know them?

24 A I just know them from, from Jeff and all. I don't know
25 them personally.

1 Q Did you see Jeff over at Cherokee?

2 A Yes, sir.

3 Q Where would he be --

4 MR. MEARS: Your Honor, I'm going to object to the
5 form of the question unless there's some time limit put
6 on it. Did he just see him there, I think would --

7 THE COURT: Rephrase your question, please, sir.

8 BY MR. HARDY:

9 Q Around April the 7th, before then? April the 10th?

10 Did you see Jeff over at Cherokee?

11 A Yes, sir.

12 Q Where would, where would you see Mr. Cromartie?

13 A At his cousin, Lisa Young.

14 Q Who did he hang out with over there?

15 A I really, I really can't recall.

16 Q Did any of the other people, Jeff, Corey, Gary, any of
17 them have a car?

18 A No, sir; not to my knowledge.

19 Q You're the only one that had a car?

20 A Yes, sir; I had a car.

21 Q Do you know where he came from when he came down to
22 Thomasville there in February?

23 A No, sir.

24 Q Do you know anything about the Madison Street Deli
25 robbery, Mr. Cromartie, I mean, Mr. Lucas?

1 A No, sir.

2 Q After -- the Friday after it happened, did you hear
3 anybody talking about it on the newspaper or TV?

4 A Gary and Carnell Cooksey.

5 Q What were they saying?

6 MR. MEARS: Your Honor, I'm going to object. That
7 would call for a hearsay response from this witness
8 about what some other witness said.

9 THE COURT: Any response, Mr. Hardy?

10 MR. HARDY: Leave it with the Court.

11 THE COURT: Sustained.

12 BY MR. HARDY:

13 Q Did you ever see the .25 caliber gun, Thad?

14 A No, sir.

15 Q Did you hang out with those people that much?

16 A Just off and on. Just, I would, like, after work, I
17 would --

18 Q How late did you work?

19 A About 2:30 A. M.

20 Q What time did you go to work in the daytime at
21 Shoney's?

22 A 6:00 in the morning.

23 Q So you basically worked from 6:00 in the morning till
24 2:30 in the morning?

25 A 6:00 till 2:00. 6:00 in the morning until 2:00 P. M.

1 and then I worked at Domino's from 4:30, week nights till about
2 12:00 to 12:30. Weekends, I worked from 6:00 to 2:30 or 3:00
3 o'clock A. M.

4 Q So you worked twelve hours or so a day?

5 A Yes, sir.

6 Q Saturday night, Sunday morning, April the, excuse me,
7 April the 10th, when you got off work did you go over to
8 Cherokee?

9 A Yes, sir.

10 Q And when you got over there who did you see?

11 A Jeff, Jeff Cromartie and Lisa Young and Gary Young.

12 Q Where'd you see them?

13 A At Lisa's apartment.

14 Q And did Jeff talk to you?

15 A Yes, sir.

16 Q What did he say to you?

17 A He asked me to take him to the store.

18 Q Did you want to do that?

19 A It was late. I didn't want to, I didn't want to go to
20 the store.

21 Q Did you refuse the first time he asked?

22 A Yes, sir.

23 Q Did he ask any more?

24 A Yes, sir.

25 Q Who asked you?

1 A Jeff.

2 Q Did you refuse again?

3 A Yes, sir.

4 Q Did he ask you any more?

5 A Yes, sir.

6 Q How many times did he ask you before you agreed to take
7 him?

8 A It was about three times.

9 Q Why did you agree to take him?

10 A He kept -- I got aggravated. I just, you know, if he
11 wanted to go to the store that bad, I said, well, I'd go on and
12 take him.

13 Q Do you know why he wanted to go to the store?

14 A No, sir.

15 Q He's the one that asked to go to the store?

16 A Yes, sir.

17 Q Did anybody go with you -- with him to the store?

18 A Corey.

19 Q Corey who?

20 A Corey Clark.

21 Q What seat were you in?

22 A I was the driver.

23 Q Who was in the front seat?

24 A Jeff.

25 Q Who was in the back seat?

1 A Corey Clark.

2 Q Do you know where, why they wanted to go to the store?

3 A No, sir.

4 Q Which store did you start to go to?

5 A It's where Food Max was. I think it's probably now
6 Piggly-Wiggly.

7 Q Did you go, try to go there?

8 A Yes, sir.

9 Q Did anybody tell you not to go there?

10 A Yes, sir. Jeff said he didn't want to go to that
11 store.

12 Q Did he tell you where to go?

13 A Yes. The store on U. S. A. 19.

14 Q Did you know what store he was talking about?

15 A Not till we got there.

16 Q Did he -- Who told you where to go?

17 A Jeff.

18 Q Did he direct you where to go?

19 A Yes, sir.

20 Q And where did you go?

21 A Well, we was, I was driving to the Junior Food Store
22 and he told me not to drive up in there, so we drove on the side
23 of Pinetree Boulevard.

24 Q Who told you to do that?

25 A Jeff.

1 Q Who told you where to stop?

2 A Jeff.

3 Q And did you stop?

4 A Yes, sir.

5 Q Did anybody get out?

6 A Corey and Jeff.

7 Q Did you know what they were going to do in the store?

8 A They told me they was going to steal some beer.

9 Q Did you ever see a gun?

10 A No, sir.

11 Q Did you stay right there or what'd you do?

12 A They told me to park down there in Providence Plaza.

13 Q Who told you that?

14 A Jeff.

15 Q Did you do that?

16 A Yes, sir.

17 Q Did Corey ever tell you what to do?

18 A No, sir.

19 Q Where was he?

20 A In the back seat.

21 Q Did you go to Providence Plaza?

22 A Yes, sir.

23 Q Did you park there?

24 A Yes, sir.

25 Q Did they come back?

1 A Yes, sir.

2 Q Who came back?

3 A Jeff and Corey.

4 Q Did they walk back or run back or what?

5 A When I looked up they was just already getting in the
6 car. I don't know if they ran or walked.

7 Q When they got back did they have anything with them?

8 A Beer.

9 Q Who had the beer?

10 A Jeff had a case and Corey had a case.

11 Q What kind of beer?

12 A Budweiser.

13 Q Did anything happen to the beer? Was the cartons whole
14 or broken or do you know?

15 A It was in a box.

16 Q It was Budweiser beer?

17 A Yes, sir.

18 Q Did they say anything to you when they got in the car?

19 MR. MEARS: Objection, Your Honor. Unless it's a
20 response from Mr. Cromartie, it would be hearsay.

21 BY MR. HARDY:

22 Q Did Mr. Cromartie say anything to you when he got in
23 the car?

24 A Said, "Let's go".

25 Q And did anybody -- Did Mr. Cromartie tell you where to

1 go?

2 A I knew where to go.

3 Q Which way did you go?

4 A Pinetree Boulevard, all the way down to Smith Avenue
5 and turn left, by Cherokee Apartments.

6 Q Where'd you go in Cherokee?

7 A Tonya Frazier's house.

8 Q Why'd you go to her house?

9 A That's where they, you know, that's where they were
10 staying at. I mean, that wasn't where they was staying, where
11 they were hanging out.

12 Q And did they get out?

13 A Yes, sir.

14 Q Who got out?

15 A We all got out.

16 Q Who's all of us?

17 A Me, myself, and Corey and Jeff.

18 Q Do you know where Gary Young was?

19 A Uh, Tina's house. Tina Washington.

20 Q How do you know that?

21 A Because when I was outside he still at the apartment
22 and came over to, to --

23 Q After ya'll got back?

24 A Yes, sir.

25 Q Do you know where Carnell Cooksey was?

1 A They say he was asleep at Tonya's house, asleep on the
2 couch.

3 Q Where did ya'll go? Did you go inside or outside?

4 A Inside.

5 Q What happened when you got inside?

6 A Well, there was numerous of people there and they, you
7 know --

8 Q Who all was there?

9 A There was quite a few people there.

10 Q What happened when you got inside?

11 A They put the beer on the table, one on the counter and
12 one on the table and they started drinking and, you know,
13 listening to music, whatever.

14 Q Who was drinking the beer?

15 A Basically who all was there.

16 Q Did you drink any?

17 A No, sir.

18 Q Do you drink beer?

19 A No, sir.

20 Q Who was drinking the beer?

21 A Corey, Gary, Carnell. And like I say, there was
22 numerous people there.

23 Q Was Mr. Cromartie drinking?

24 A I didn't see him drink.

25 Q Did he come in with a beer?

1 A Yes, sir.

2 Q Did you notice anything about the beer?

3 A It had dirt on it.

4 Q What kind of beer was it?

5 A Budweiser.

6 Q Did you ever see the gun, Mr. Lucas?

7 A No, sir.

8 Q Did anybody ever tell you what happened at the store?

9 A Yes, sir.

10 Q Who told you what happened at the store?

11 A Corey.

12 Q Did Mr. Lucas ever tell you what happened at the store?

13 A Excuse me?

14 Q This man over here, Mr., Jeff, did he ever tell you,

15 Mr. Lucas, what happened at the store?

16 A No, sir.

17 Q The next day did you go to work?

18 A Yes, sir.

19 Q Was that at Shoney's?

20 A Domino's. I was off at Shoney's.

21 Q And then did you go to Bainbridge?

22 A Yes, sir.

23 Q When did you go to Bainbridge?

24 A Tuesday, Tuesday evening.

25 Q Why'd you go to Bainbridge?

1 A I have some relatives, I have some relatives over
2 there. So I go to see them.

3 Q Did anything happen to the car?

4 A Busted the head on it.

5 Q What'd you do with the car?

6 A Parked it at a convenience store.

7 Q Did you leave it?

8 A Well, I leave it just to come back over here and try to
9 get some excess cash to go back and get it and get it fixed.

10 Q Did you say what was wrong with your car?

11 A It had a busted radiator and warped the head.

12 Q It was overheating?

13 A Yes, sir.

14 Q Do you know what happened to your car at the
15 convenience store?

16 A The man told me I could leave it there. But when I got
17 back I was arrested.

18 Q Did you talk to the police? Did you talk to the police
19 when you were arrested? Give them a statement?

20 A Yes, sir.

21 Q Who'd you talk to? Do you know?

22 A Lt. Melvin, Lt. Melvin Clark. Whatever, lieutenant or
23 something.

24 Q Did you talk to one of the detectives?

25 A Yes, sir.

1 Q Who told you which store to go to? Who told you to go
2 to the Junior Food Store?

3 A Jeff.

4 Q Who told you where to park?

5 A Jeff.

6 Q Who told you where to go to Providence Plaza?

7 A Jeff.

8 Q Who told you, let's go, when you got back to the car?

9 A Jeff.

10 Q Who had the beer?

11 A Jeff and, uh, Corey.

12 Q Are you telling us what you remember and what you saw?

13 A That's it.

14 Q All that's happened here in Thomas County, Georgia?

15 A Yes, sir.

16 MR. HARDY: He's with the Court.

17 MR. MEARS: One moment, Your Honor.

18 CROSS EXAMINATION

19 BY MR. MEARS:

20 Q Good morning, Mr. Lucas.

21 A Good morning.

22 Q Mr. Lucas, my name is Mike Mears. I'm one of the
23 attorneys representing Ray Jefferson Cromartie. If I ask you any
24 question that you don't understand, please ask me to repeat the
25 question. Okay?

1 A Yes, sir.

2 Q If you will, speak loudly enough so that the last
3 person in the jury down here can hear you and so that the court
4 reporter can take down what you say.

5 A Yes, sir.

6 Q Okay? Please try to speak into the microphone if you
7 can.

8 Mr. Lucas, are you the same Thaddeus Lamar Lucas that was
9 indicted by a Thomas County Grand Jury in October of 1994 for the
10 offense of being a party to the murder of Mr. Richard Slysz?

11 A Yes, sir.

12 Q Are you the same Thaddeus Lamar Lucas that was indicted
13 in October of 1920 (1994, sic.) for being a party to the armed
14 robbery of Mr. Richard Slysz?

15 A Yes, sir.

16 Q I ask you to look at what's been marked as Defendant's
17 Exhibit Number 9 and just verify that that is the indictment
18 returned against you.

19 A Yes, sir.

20 Q You're the same person?

21 A Yes, sir.

22 Q Mr. Lucas, were you represented by an attorney at the
23 time you were indicted?

24 A Yes, sir.

25 MR. MEARS: Your Honor, I would tender Defendant's

1 Exhibit 9. I've shown these to Mr. Hardy.

2 THE COURT: Any objections?

3 MR. HARDY: It seems to be in the proper form, Your
4 Honor.

5 THE COURT: It's admitted without objection.

6 BY MR. MEARS:

7 Q Mr. Lucas, you were allowed to plead guilty to the
8 offense of Robbery to an accusation rather than an indictment;
9 were you not?

10 A Yes, sir.

11 Q In other words, you didn't have to go to trial for the
12 offense of Murder, being a party to Murder or to being a party to
13 Armed Robbery; did you?

14 A No, sir.

15 Q The district attorney allowed you to plead guilty to a
16 lesser offense, to an accusation; didn't he?

17 A Yes, sir.

18 Q That was in exchange for your testimony here today;
19 wasn't it?

20 A Yes, sir.

21 Q They just let you do that out of the goodness of their
22 heart?

23 A No, sir. I was found guilty on October 28th, '96 on
24 Aggravated Battery and Aggravated Assault and I was sentenced on
25 December 12th to twenty years, twenty, ten to serve on Aggravated

1 Battery, and twenty years on Aggravated Assault. I was already
2 heading to the system and my lawyer came to, you know, came to a
3 conclusion, you know, to get my time ran concurrent for a lesser,
4 lesser offense.

5 Q Let me, let me ask you some questions about that, and
6 I'll come back. You were originally arrested and charged with
7 the murder of Mr. Richard Slyszy and the armed robbery of Mr.
8 Slyszy at the Junior Food; were you not?

9 A Yes, sir.

10 Q And then you were indicted by a Thomas County Grand
11 Jury; were you not?

12 A Yes, sir.

13 Q And you made a statement to the police; did you not?

14 A Yes, sir.

15 Q And you were given bond; weren't you?

16 A Yes, sir.

17 Q In other words, you were let out of jail after you gave
18 your statement; didn't you?

19 A Yes, sir.

20 Q And you posted a bond?

21 A Correct.

22 Q Until you were, those charges were to be disposed of;
23 isn't that correct?

24 A Yes, sir.

25 Q And while you were on bond were you arrested and

1 charged with any other crimes?

2 A Yes, sir.

3 Q Are you the same Thaddeus Lucas that was indicted by a
4 Thomas County Grand Jury in October of 1996 for the offense of
5 Aggravated Assault?

6 A Yes, sir.

7 Q You were indicted for the Aggravated Assault on
8 Marquita Higgins; were you not?

9 A Yes, sir.

10 Q You were indicted for assaulting her with your fists;
11 were you not?

12 A Yes, sir.

13 Q Are you the same Thaddeus Lucas that was indicted in
14 October of 1996 for the Aggravated Battery of Marquita Higgins?

15 A Yes, sir.

16 Q And you were charged with intentionally, maliciously
17 causing bodily harm to the person of Marquita Higgins by
18 seriously disfiguring her body by causing a mandible fracture and
19 by causing a blowout fracture to the right medial orbital wall?

20 A Yes, sir.

21 Q Are you the same Thaddeus Lucas that was indicted for
22 those offenses?

23 A Yes, sir.

24 Q I ask you to look at what's been marked as Defendant's
25 Exhibit 8. Is that your indictment, Mr. Lucas?

1 A Yes, sir.

2 MR. MEARS: Your Honor, I would tender Defendant's
3 Exhibit 8. It's a certified copy of the indictment.

4 THE COURT: Any objection?

5 MR. HARDY: Not to the form he's got, Your Honor.
6 Not -- He's got a certified copy. They'd speak for
7 themselves.

8 THE COURT: It's admitted without objection.

9 BY MR. MEARS:

10 Q Mr. Lucas, as a result of being charged with the
11 offense of Aggravated Assault and Aggravated Battery of Marquita
12 Higgins, you went to trial; did you not?

13 A Yes, sir.

14 Q And you were tried by a jury here in Thomas County; did
15 you not?

16 A Yes, sir.

17 Q And you were convicted of the offense of Aggravated
18 Assault; were you not?

19 A Yes, sir.

20 Q You were convicted of the offense of Aggravated
21 Battery; were you not?

22 A Yes, sir.

23 Q And that took place in December of 1996? Is that
24 correct?

25 A For the trial?

1 Q Your conviction and your sentence was in December of
2 1996; is that correct?

3 A Yes, sir.

4 Q The trial, the actual trial was in October of '96; is
5 that correct?

6 A Yes, sir.

7 Q And then you were later brought back to court in
8 December and actually sentenced; is that correct?

9 A Correct.

10 Q And you were given, for the offense of Aggravated
11 Assault, you were sentenced to ten years in prison; were you not?

12 A Yes, sir.

13 Q And for the offense of Aggravated Battery you were
14 sentenced to a period of twenty years; were you not?

15 A That's correct.

16 Q Is it your understanding that those two sentences to
17 run concurrent or at the same time?

18 A Yes, sir.

19 Q Did you understand that?

20 A Yes, sir.

21 Q That took place in December, that sentence took place
22 in December of 1996; did it not?

23 A Yes, sir.

24 Q I show you what's been marked as Defendant's Exhibit
25 12. Are you the same Thaddeus Lamar Lucas that was tried and

1 sentenced for those offenses?

2 A Yes, sir.

3 MR. MEARS: Your Honor, I would tender Defendant's
4 Exhibit 12.

5 THE COURT: Any objections?

6 MR. HARDY: It's the correct form, Your Honor.

7 THE COURT: It's admitted without objection.

8 BY MR. MEARS:

9 Q Mr. Lucas, after you had been sentenced to twenty years
10 with the ten year concurrent sentence on the Aggravated Battery,
11 you then agreed to plead guilty to lesser included offenses in
12 the crimes for which you were indicted involving the Junior Food
13 Store; is that correct?

14 A Yes, sir.

15 Q And you were represented by an attorney in that plea
16 agreement; were you not?

17 A Yes, sir.

18 Q And your attorney is here in court today; is she not?

19 A He is.

20 Q Is he not? I'm sorry. Is he not? Now, that plea was
21 not to the indictment for which you were charged; was it? In
22 other words, you were indicted for Murder; were you not?

23 A Yes, sir.

24 Q And you understand that if the State had sought the
25 death penalty against you for Murder you could have received the

1 death penalty if the jury had handed it back? Do you understand
2 that?

3 A Yes, sir.

4 Q You understand that you could have been sentenced to
5 life without parole if the jury had determined that was the
6 appropriate sentence for the offense of Murder --

7 MR. HARDY: Judge, I'm going to object. Side bar.
8 He's misstating the law, Your Honor. I think he was
9 indicted as parties to the crime.

10 MR. MEARS: Your Honor, we might want to talk about
11 that outside the presence of the jury.

12 THE COURT: Ladies and gentlemen, let me ask that you
13 step to the jury room for a moment.

14 (Whereupon the jury retires from the courtroom,
15 after which the following transpired)

16 THE COURT: Mr. Hardy, as soon as the door is closed,
17 if you'd be a little bit more specific in regards to your
18 objection, please.

19 MR. HARDY: I think he and Mr. Clark were charged with
20 felony Murder and being parties thereto. They weren't
21 charged with malice Murder, I believe.

22 MR. MEARS: Your Honor, I --

23 THE COURT: Anything further?

24 MR. HARDY: He was saying, I think, he can get the
25 death penalty for felony Murder. Is that -- I was trying to

1 hear and go through my papers.

2 MR. MEARS: Yes. I said for the offense for which he
3 was charged he could have received the penalty of death if
4 he had been found guilty of the offense of Murder for which
5 he was charged. And the objection arose at that point.

6 If the State is going to take the position that you
7 cannot receive the death penalty for the offense of felony
8 Murder, I'll withdraw the question and go on to something
9 else.

10 MR. HARDY: Judge, I was just trying to listen, Judge,
11 and I kept hearing him with my papers and it came to my mind
12 that this man and the other man were charged with felony
13 Murder and being parties thereto. They were not charged,
14 excuse me, Your Honor, with malice Murder as Mr. Cromartie
15 is. Mr. Cromartie was not charged as a party thereto. He
16 was charged with the offense of malice Murder. Mr. Clark
17 and Mr. Lucas were charged as parties, felony Murder, count
18 one, and count two, Armed Robbery, parties thereto. So I
19 think that's the wording of the indictment as to those,
20 original indictments as to those two individuals.

21 And we would leave that with the Court. I didn't
22 clarify -- He didn't -- wasn't clear as to what he was
23 saying was what they were charged with and what they, what
24 really happened, in my mind.

25 MR. MEARS: The charge for the offense of Murder under

1 Official Code of Georgia 16-5-1. It's charged, the
2 indictment reads that Mr. Lucas was charged with the offense
3 of Murder in that, in the county aforesaid, did unlawfully,
4 knowingly, willfully and intentionally being a party thereto
5 while in the commission of a felony, to wit: Armed Robbery,
6 cause the death of Richard A. Slys, a human being. If Mr.
7 Hardy is going to state in his place that you cannot receive
8 the death penalty for felony Murder, I'll withdraw the
9 question and go on to another line of questioning.

10 THE COURT: Gentlemen, I don't think that's the
11 question. I think the question is, regardless of whether he
12 states it in his place or not, Mr. Mears, the question is,
13 my understanding of the law, insofar as when the death
14 penalty can be imposed. I don't know, I don't -- I'm really
15 not sure of the basis of the State's objection yet. I don't
16 know if the State is saying, you know, under Eckland versus
17 Florida --

18 MR. MEARS: Inmans versus Florida.

19 THE COURT: Inmans versus Florida, that since, since
20 neither one of these were the trigger men and the death
21 penalty couldn't be imposed. Of course, that's been carried
22 a little bit further. If there are sufficient findings of
23 wanton and reckless disregard for the possible consequences
24 of a possible or purported victim in a crime, then the death
25 penalty can be, in fact, be imposed even if you are not the

1 trigger person.

2 MR. MEARS: Your Honor, I, I agree. And I'm not
3 sure -- I'm arguing as to what I understand the objection to
4 be. And if I'm incorrect in the objection, I will certainly
5 withdraw it. But I certainly take the position, just like
6 Mr. Hardy does, that you can't receive the death penalty, or
7 shouldn't receive the death penalty for felony Murder. He's
8 not indicted under those terms. He's indicted, he's
9 indicted for unlawfully, knowingly, willfully and
10 intentionally --

11 THE COURT: That's obviously not the law. You cannot
12 receive the death penalty for felony Murder, Mr. Mears.

13 MR. MEARS: Well, Your Honor, I didn't make the
14 objection. Mr. Hardy did.

15 MR. HARDY: I don't think he said what they were were
16 charged -- He said, "You were charged with Murder" and he
17 didn't say, "You're charged with felony Murder and parties
18 thereto, not being the trigger man". He's trying to leave
19 the impression these people pulled the trigger somehow or
20 another. And that's not the way they were indicted nor what
21 the indictment shows, Your Honor.

22 THE COURT: Gentlemen, I'll --

23 MR. HARDY: Or what they pled to.

24 THE COURT: I'll overrule the objection.

25 Anything further?

1 MR. MEARS: Nothing further, Your Honor. Thank you.

2 THE COURT: Mr. Mears, are you aware of any, any law at
3 this time in regards to whether or not the indictment has
4 to, has to track the language of particular holdings and, in
5 fact, allege that although a party to the crime, it was, you
6 know, --

7 MR. MEARS: No; Your Honor.

8 THE COURT: -- willful, wanton, reckless disregard --

9 MR. MEARS: I specifically requested charges on that,
10 that if you have an interrogatory type of charge to outline
11 the jury's specific findings of fact and the individual's
12 involvement with regard to felony Murder. Judges, and
13 probably rightly so, applying the law as it is have refused
14 to give such a charge and refused to provide such a verdict,
15 a jury verdict form. If a person, unfortunately, the law is
16 in Georgia, not the federal part of Georgia but the State
17 part of Georgia, the law is that if a person's convicted of
18 felony Murder, there's no way to delineate whether or not
19 the jury found that they, other than going on to a
20 sentencing hearing, as to whether or not the person is to be
21 subjected to the death penalty offense.

22 There was a young man just sentenced in Cobb County day
23 before yesterday for a death in a convenience store where
24 his co-defendant was the trigger person. Everyone agreed.
25 And his co-defendant, Vance Soloman, was executed about

1 seven or eight years ago. Brandon Jones was just convicted
2 and sentenced to death in Cobb County when the district
3 attorney argued that Vance Soloman was the trigger person.
4 I wish it weren't so. I don't believe that when the Supreme
5 Court finally resolves this issue, that they'll allow jurors
6 to sentence someone to death for the involvement that
7 perhaps Mr. Lucas had. But --

8 THE COURT: My question is, and it really goes back to
9 whether or not the State's objection, maybe not on the basis
10 stated, is good or not, but, but that simply being the
11 indictment against Mr. Lucas as formed, would the indictment
12 have to put him on notice of the State's contention that
13 they felt like the, the Defendant's acts were wilful,
14 wanton, reckless disregard of the circumstances and possible
15 injuries to the victim for the State to seek the death
16 penalty. If, if you see my point? My point is, you know,
17 if that's the case, then your question is inappropriate
18 because he could not have been tried for, in a sentencing
19 phase --

20 MR. MEARS: Absolutely, Your Honor --

21 THE COURT: -- imposition of death or life imprisonment
22 without parole.

23 MR. MEARS: There's no law in Georgia that requires the
24 indictment to be in a form such as to put on notice. That's
25 why the 17-10-30 -- 130 requires that there be a notice of

1 intent to seek the death penalty and now it's prior to
2 arraignment and that there be a proceeding under the Unified
3 Appeal. That's strictly up to the district attorney. He's
4 indicted for Murder, whether it's malice Murder or felony
5 Murder. And if -- district attorneys do it all the time.
6 They'll have double counts. They'll have a malice Murder
7 and a felony Murder and seek the death penalty on both of
8 them. I'm sure Your Honor has seen cases like that. And so
9 I think my question is appropriate. I wish it weren't
10 appropriate. I wish I were not allowed to ask that question
11 because I think it would cut down significantly on the
12 number of death sentences.

13 THE COURT: Well, at this point in time, unless I can
14 be shown that the indictment as phrased or otherwise would
15 make the question improper, I overrule the objection.

16 You may bring the jury in.

17 (Whereupon the jury returns to the courtroom, after
18 which the following transpired)

19 THE COURT: Mr. Mears, you may proceed.

20 MR. MEARS: Thank you, Your Honor.

21 Q Mr. Lucas, before we took the break I asked you the
22 question whether or not you understood that as you were indicted
23 for the offense of being a party to the crime of Murder, felony
24 Murder, as written in the indictment, do you understand that
25 should the district -- had the district attorney decided to seek

1 the death penalty against you and the jury determined it was an
2 appropriate sentence, you could have received death under that
3 indictment? Do you understand that?

4 A Yes, sir.

5 Q And you understand that if the district attorney had
6 pursued the death penalty as an appropriate punishment and a jury
7 determined that it was appropriate, you could have received life
8 without parole? Do you understand that?

9 A Yes, sir.

10 Q And you understand that if the district attorney had
11 sought your prosecution for this offense of felony Murder, the
12 jury could have returned a sentence and sentenced you to life
13 imprisonment for the rest of your natural life? You understand
14 that?

15 A Yes, sir.

16 Q You were allowed to plead guilty to an accusation and
17 not plead to anything under this indictment; weren't you?

18 A Correct.

19 Q In fact, the indictment was dismissed; wasn't it?

20 A Correct.

21 Q And it was dismissed after you had agreed to testify;
22 wasn't it?

23 A Repeat that.

24 Q It was dismissed on February the 20th, 1997; is that
25 correct? I'll show you. Excuse me. I'm showing you a document

1 that's been marked Defendant's Exhibit Number 10, Mr. Lucas. Are
2 you the same Thaddeus Lamar Lucas?

3 A Yes, sir.

4 Q And that's your case and it shows that it was dismissed
5 on February the 20th, 1997; wasn't it?

6 A That's what it says.

7 Q Did you know it had been dismissed? Did you know your
8 indictment against you for felony Murder had been dismissed? Did
9 you know that?

10 A Well, not until I pleaded and I got a copy of it.

11 Q I'm sorry?

12 A I got a copy, the same copy you have.

13 Q Okay.

14 MR. MEARS: I tender Defendant's Exhibit Number 10.

15 THE COURT: Any objections?

16 MR. HARDY: No, sir.

17 THE COURT: It's admitted without objection.

18 BY MR. MEARS:

19 Q In exchange for your cooperation you avoided being put
20 on trial for the death penalty; didn't you? You avoided being
21 put on trial for the offense of Murder; didn't you?

22 A You talking about the plea?

23 Q Um-hum. Yes, sir.

24 A Yes, sir.

25 Q And you were allowed to plead guilty to the offense of

1 Robbery; didn't you?

2 A Sir?

3 Q You pled guilty to the offense of Robbery?

4 A Yes, sir.

5 Q Not even Armed Robbery?

6 A No, sir.

7 Q Just plain Robbery. And you also pled guilty to the
8 offense of Hindering the Apprehension of a Criminal; didn't you?

9 A Correct.

10 Q And for the offense of Robbery you were given,
11 sentenced to twenty years but you only have to serve ten years of
12 that; isn't that correct?

13 A That's correct.

14 Q And for the offense of Hindering the Apprehension of a
15 Criminal you were sentenced to five years?

16 A Yes, sir.

17 Q All of that runs concurrent to that twenty year
18 sentence you're serving for beating up Marquita Higgins; doesn't
19 it?

20 A Yes, sir.

21 Q So the only sentence you're serving, as far as the
22 length is concerned, is your aggravated battery sentence and your
23 aggravated assault sentence against Marquita Higgins; isn't it?

24 A That's --

25 Q It's all running at the same time; isn't it?

1 A I don't know --

2 Q You've only got one twenty year period of your life;
3 haven't you? That's all they're asking for.

4 A I guess.

5 MR. MEARS: Your Honor, I would tender Defendant's
6 Exhibit 11, which is the sentencing sheet.

7 THE COURT: Admitted without objection.

8 BY MR. MEARS:

9 Q Now, Mr. Lucas, you were arrested by the Thomasville
10 Police Department on April the 13th, 1994; is that correct?

11 A I don't recall the date, but it was in April; yes, sir.

12 Q Let me put it in maybe a time frame. Were you around
13 the Cherokee Apartments on April the 12th when the shooting took
14 place?

15 A Yes.

16 Q You remember -- You know which shooting I'm talking
17 about, when the West Side guys came over there?

18 A Yes, sir.

19 Q And Gary Young shot it out with them. You, you're
20 aware of that; aren't you?

21 A Yes.

22 Q Okay. You were arrested right after that; weren't you?

23 A A day later. The next day.

24 Q The next day. April the 13th. And you were placed in
25 the cell with Corey Clark, excuse me, you were placed in a cell

1 next to Corey Clark at the justice center; were you not?

2 A Yes, sir.

3 Q And Gary Young was in that cell too?

4 A No. All, all of us was in individual cells.

5 Q Okay. But you were in the same pod?

6 A Yes.

7 Q And so the ladies and gentlemen understand, the pod

8 means you were all together in one area and then you had

9 individual cells that you go into at night; is that correct?

10 A No, sir. It was a holding cell.

11 Q Holding cell. You were all together; would that be a
12 fair statement, back at the jail?

13 A Yes. In holding cells, separate cells.

14 Q You, Carnell Cooksey --

15 A Me, Corey, Gary --

16 Q -- Corey and Gary?

17 A And Jeff.

18 Q Jeff wasn't back there with ya'll; was he? Not in that
19 same area; was he?

20 A He was in intake.

21 Q He was in intake, but he wasn't there back there with
22 ya'll; was he?

23 A What? In the pod?

24 Q Yeah.

25 A Yes; he was.

1 Q Was he with you and Gary in the same pod, in the same
2 cell location?

3 A He was --

4 Q Think about it now.

5 A If I'm not mistaken, Gary was in B-4. Corey was in B-
6 5. I was in B-6. And Cromartie was in B-3.

7 Q You and Gary and Corey were all together? Ya'll could
8 talk together; couldn't you? Would you at least agree with that?
9 That you were all together where you could talk?

10 A We was in the same B pod; yes, sir.

11 Q Okay. And you talked about your case; didn't you? You
12 talked about why you'd been arrested?

13 A I did; yes.

14 Q Now, let me take you back a little bit after -- a
15 little bit before your arrest. You testified that on the morning
16 of April the 10th you had finished working at Domino's and you
17 went over to the Cherokee Apartments. And I assume you went over
18 there to see your girlfriend, Tameka?

19 A Yes, sir.

20 Q And you had been over to the Cherokee Apartments quite
21 a bit since you and Tameka had started having a relationship; is
22 that correct?

23 A Yes, sir.

24 Q So it wasn't unusual for you to go to Cherokee
25 Apartments?

1 A No; it wasn't unusual.

2 Q Okay. Now, what was your last delivery for Domino's
3 Pizza that night? Do you recall?

4 A I don't recall.

5 Q You delivered all over Thomasville; didn't you?

6 A Yes, sir.

7 Q And you'd made deliveries out on Pinetree; hadn't you?

8 A Yes, sir.

9 Q And you knew the Pinetree area; didn't you?

10 A Yes, sir.

11 Q And you knew the intersection of W. Jackson and
12 Pinetree; didn't you?

13 A Yes, sir.

14 Q And you knew -- I mean, you'd been all over town
15 delivering pizzas; hadn't you?

16 A Yes, sir.

17 Q And you testified that no one else in that group of
18 people that you were talking about earlier, you were the only one
19 that had a car; weren't you?

20 A Well, I guess, you know.

21 Q Jeff Cromartie didn't have a car; did he?

22 A No, sir.

23 Q Do you know whether Jeff Cromartie even knows how to
24 drive or not?

25 A Yes, sir.

1 Q Has he ever driven your car?

2 A No, sir. He's driven my father's car.

3 Q Do you know whether or not he's got a Georgia driver's
4 license or anything?

5 A I don't know.

6 Q Okay. You've never seen him drive your car; have you?

7 A No, sir.

8 Q Since he came down here and was staying at Cherokee
9 Apartments, had he ever gone with you to deliver pizzas?

10 A No, sir.

11 Q Had Corey Clark?

12 A No, sir.

13 Q Had you ever been riding around with Corey Clark?

14 A No, sir.

15 Q You've never had Corey Clark in your car riding around
16 before April the 10th?

17 A The only night he was in my car was that night of the
18 incident.

19 Q Okay. That's the first time Corey Clark, your friend,
20 had ever been in that car?

21 A That's the only time he's been in my car.

22 Q Okay. Would you agree with me that you knew that area
23 of the city pretty well?

24 A Yes, sir.

25 Q Okay.

1 A That was my job.

2 Q You knew Gary Young too; didn't you?

3 A Yes, sir.

4 Q How close were you with Gary Young?

5 A We was all right. I mean, we wasn't the best of
6 friends, but we were --

7 Q You were friends?

8 A We were friends all right.

9 Q You were good friends; weren't you?

10 A We was -- I mean, --

11 Q Mr. Lucas, you're serving your time now.

12 A Yeah; I understand.

13 Q You understand that you've sworn to tell the truth to
14 these ladies and gentlemen?

15 A Yes, sir.

16 Q How close of friends were you with Gary Young?

17 A I mean, if he did something outrageous, I mean, I don't
18 be taking up for what he, taking up for what he had. I ain't, I
19 ain't that kind of friends.

20 Q But before April the 13th ya'll were good friends;
21 weren't you?

22 A Yeah, sort of.

23 Q Okay. Now, you were interviewed twice on April the
24 13th by Det. Guy Winkelman and the other police officer. Do you
25 recall that?

1 A Yes, sir.

2 Q There were two different interviews. Do you recall
3 that?

4 A Yes.

5 Q And on, during the first interview you told Det.
6 Winkelman that you got off work at 2:30; didn't you?

7 A Yes, sir.

8 Q Have you had an opportunity to review your statement?

9 A No, sir.

10 Q Have you had an opportunity to review any of your
11 statements?

12 A No, sir.

13 Q Several statements you made?

14 A No, sir.

15 Q Okay. Now, you told Det. Winkelman that you were with
16 Tameka, Tonya Frazier, Erica Bell, Corey Clark and Carnell
17 Cooksey on the night that you got off work on the 10th day of
18 April, 1994. That's Sunday morning. Didn't you?

19 A Yeah.

20 Q That was your first statement. That's what you told
21 him. You told him you were with Tameka, Tonya, Erica, Corey and
22 Carnell. You told him that. Then you said that Gary Young and
23 Jeff Cromartie came into the apartment around 3:30 or 4:00
24 o'clock; didn't you?

25 A I don't know.

1 Q Do you recall making that statement?

2 A Sir?

3 Q Do you recall making that statement, that you were with
4 Corey Clark, Carnell Cooksey, Erica, Tonya and Tameka when Gary
5 Young and Jeff Cromartie came in to the apartment?

6 A Yes, sir.

7 Q That's what you told him?

8 A Yes, sir.

9 Q And that was a lie; wasn't it?

10 A Yes, sir.

11 Q You lied to them at that time; didn't you?

12 A Yes, sir.

13 Q You denied having been with Gary Young or Jeff
14 Cromartie earlier that evening; didn't you?

15 A Yes, sir.

16 Q And that was a lie; wasn't it?

17 A Yes, sir.

18 Q And you told Det. Winkelman that Jeff and Gary came
19 into Tonya Frazier's apartment with the beer in your first
20 statement; didn't you?

21 A Yes, sir.

22 Q And that was a lie; wasn't it?

23 A Yes, sir.

24 Q You were trying to protect yourself; weren't you?

25 A Basically; yes, sir.

1 Q But you knew if you told the truth, you were going to
2 be arrested; didn't you?

3 A Correct.

4 Q And you knew that you were involved; didn't you?

5 A After the fact; yes, sir.

6 Q And you were, you were telling lies to the
7 investigators to protect yourself; weren't you?

8 A I don't know.

9 Q Now, during this second interview that you gave to Det.
10 Winkelman, you told him that when you got there at 2:30 A. M.,
11 got there being the apartment, that Jeff and Corey were already
12 at Tonya's house; didn't you? That was part of your second
13 statement. Do you recall making that statement?

14 A I didn't have two statements. I mean, there was no
15 other statement.

16 Q You don't recall making that statement at all?

17 A No, sir.

18 Q We'll come back to that. You told Det. Winkelman that
19 you didn't know what Gary Young was doing that night; didn't you?
20 You didn't know -- You told him you didn't know what he was doing
21 that night? You didn't know who he was with or where he'd been
22 in your first statement to Det. Winkelman; did you?

23 A Yes, sir.

24 Q And that was a lie; wasn't it?

25 A I didn't know what he was doing.

1 Q You knew he was there drinking beer with you; didn't
2 you?

3 A I don't drink.

4 Q Excuse me. You knew he was there drinking beer in your
5 presence?

6 A Yeah; at that time he was. I thought you was saying
7 before.

8 Q And when you were first asked about Gary Young, you
9 lied about it; didn't you? You lied about knowing where Gary
10 Young was; didn't you?

11 A Yes, sir.

12 Q You did. And you did it to protect yourself; didn't
13 you?

14 A Yes, sir.

15 Q Because you knew if you were associated with Gary Young
16 that night you was gonna be in trouble; didn't you?

17 A Yes, sir.

18 Q And so you lied to protect yourself; didn't you?

19 A Yes, sir.

20 Q And it worked; didn't it? It worked; didn't it?

21 A What you mean?

22 Q The lies worked. You weren't ever prosecuted for
23 Murder; were you?

24 A No.

25 Q You weren't ever prosecuted for Armed Robbery; were

1 you?

2 A No, sir.

3 Q You did a good job of protecting yourself.

4 MR. MEARS: Nothing further.

5 MR. HARDY: Is that a question or a statement, Your
6 Honor?

7 THE COURT: Mr. Mears, is that a question or a
8 statement?

9 MR. MEARS: I'll withdraw it, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. HARDY:

12 Q Mr. Mears just asked you about, at first you were
13 trying to protect yourself?

14 A Yes, sir.

15 Q Did you know what Jeff had done in that store?

16 A No, sir.

17 Q At the time they interviewed you, did you know what
18 Jeff had done in that store?

19 A (Shakes head negatively)

20 Q Did you -- What did you think they were gonna do when
21 you went to the Junior Food Store?

22 A Thought they was gonna snatch some beer and that was
23 it.

24 Q Snatch some beer?

25 A And that was it.

1 Q Did you know they were going in there to kill somebody?

2 A No, sir.

3 Q Did you know Jeff was gonna shoot somebody?

4 A No, sir.

5 Q Are you lying now to protect yourself?

6 A I don't have no reason to lie.

7 Q What'd you think Corey was gonna do in the store?

8 MR. MEARS: Your Honor, I'm going to object. It
9 calls for supposition, unless he's going to base it
10 upon some factual piece of evidence that's already in
11 evidence. It calls for supposition unless he can get in
12 Corey Clark's mind.

13 THE COURT: Would you repeat that question?

14 BY MR. HARDY:

15 Q What did they tell you you were gonna do at the store
16 when you left Cherokee? What'd Jeff tell you?

17 MR. MEARS: Again, it's hearsay unless it goes to
18 Mr. Cromartie --

19 BY MR. HARDY:

20 Q What'd Jeff say?

21 A Sir?

22 Q What'd Jeff say he wanted to go to the store for?

23 A Get some beer.

24 Q Why did you want to go to the Food Max?

25 A Because it was the nearest store, close to the

1 projects.

2 Q It was open; wasn't it?

3 A Yes, sir.

4 Q How many stores are open at 3:30 in the morning?

5 A That one and, uh, Swing's -- Sing's over there by, uh,
6 Pizza Hut, off of Remington.

7 Q Who told you to go to Junior Foods?

8 A Jeff.

9 Q You wanted to go to Food Max?

10 A Yes, sir.

11 Q Was that closer?

12 A Yes, sir.

13 Q Are you lying to protect Gary?

14 A No, sir.

15 Q Are you lying to protect Corey?

16 A No, sir.

17 Q Are you telling us what happened?

18 A What I know; yes, sir.

19 Q Are you going to be in prison for a long time?

20 A I don't know.

21 Q Did you even know they were gonna kill the man? Mr.
22 Jeff Cromartie was gonna kill the man when he went in the store?

23 A Nobody -- I mean, I was surprised.

24 Q Would you have took -- taken him to the store if he was
25 gonna kill somebody?

1 A I wasn't, I wasn't -- No, sir; I didn't even want to go
2 to the store that night.

3 Q Did you -- Did ya'll concoct a story in these cells, as
4 he's trying to imply, when ya'll were all in holding cells with
5 concrete walls between you?

6 A Sir?

7 Q When ya'll were down there and he said ya'll were all
8 in B-3, 4, 5, 6.

9 A Yes, sir.

10 Q Did you talk to the other people and try to change --
11 say everybody get their story straight, or did they have you
12 separated?

13 A They had us separated.

14 Q With concrete walls between you?

15 A Yes, sir.

16 Q And iron doors?

17 A Yes, sir.

18 Q Mr. Cromartie was there too?

19 A Yes, sir.

20 Q Did they talk to you individually?

21 A The detectives?

22 Q Yes, sir.

23 A Yes, sir.

24 Q So the detective would talk to you and then somebody
25 else would talk to somebody else?

1 A Yes, sir. All of us didn't talk to the same detective
2 as far as I know.

3 Q You even talked to a different detective?

4 A Yes, sir.

5 Q Who had the beer?

6 A Corey and Jeff.

7 Q Before you went to the store, where was Jeff and Corey?

8 A I was at Lisa's house. I was at Lisa's house just
9 sitting around. And I got up to use the rest -- use the
10 bathroom. That's when Jeff came to the -- well, somebody knocked
11 on the back door and I opened the back door and it was Jeff. He
12 said, "Will you take me to the store"? I said, "Yeah; I'll go on
13 and take you to the store". When I went to get my keys off, off
14 the table, I go outside and Corey, I seen Corey sitting on top,
15 on the hood of my car.

16 Q That's the first time you saw him?

17 A That's the first time I seen him.

18 MR. HARDY: Thank you.

19 RE CROSS EXAMINATION

20 BY MR. MEARS:

21 Q You'd delivered pizzas on Pinetree before; hadn't you?

22 A Yes, sir.

23 Q You knew where the Providence Apartments were on
24 Pinetree; didn't you?

25 A Yes, sir.

1 Q You'd been up and down that road many times; hadn't
2 you?

3 A Yes, sir.

4 Q Yet your testimony is that Jeff had to tell you how to
5 get to the Providence Apartment?

6 A No. He told me to park down there.

7 Q To drive up that way and park there?

8 A He told me to wait there.

9 Q Okay. How were you dressed that night?

10 A Just my, my Domino's uniform on.

11 Q Will you describe that for me, please?

12 A Blue shorts, white tennises, and Domino's blue and
13 orange shirt.

14 Q Light colored shorts?

15 A Well, they're navy blue.

16 Q Dark colored shorts?

17 A The same as that coat there (indicating).

18 Q As dark as that navy blue coat that the court reporter
19 has got on?

20 A Yes, sir.

21 Q You had on dark shorts like that?

22 A Yes, sir.

23 Q Were you wearing a cap?

24 A Yes, sir.

25 Q What kind of cap did you have on?

1 A A Domino's neon strip cap on.

2 Q One of those bright blue Domino's cap?

3 A No. The neon-like; yes, sir.

4 Q Real bright blue cap?

5 A Yes, sir.

6 Q And dark blue shorts?

7 A Domino shorts.

8 MR. MEARS: Thank you.

9 THE COURT: Gentlemen, may this witness be excused?

10 MR. HARDY: Yes, sir.

11 MR. MEARS: We have no objection.

12 THE COURT: You are excused.

13 Call your next witness.

14 MR. HARDY: Clark.

15 THE COURT: Raise your right hand, please, sir.

16 Do you solemnly swear or affirm that the evidence you
17 shall give this Court and this jury in the matter now
18 pending before this Court shall be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 MR. CLARK: I do.

21 THE COURT: Mr. Hardy?

22 COREY ALLEN CLARK

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. HARDY:

1 Q State your name for us, please?

2 A Corey Allen Clark.

3 Q Where do you live now, Corey?

4 A River State Prison in Hartwell, Georgia.

5 Q And are you the same man that had originally been
6 charged with parties to the crime in this, the murder and armed
7 robbery? Had you originally been charged with that?

8 A Yes, sir.

9 Q Not being the shooter, just parties to the crime; is
10 that true?

11 A Yes, sir.

12 Q You pled on an accusation to Robbery and Hindering the
13 Apprehension of a Criminal?

14 A Yes, sir.

15 Q And you were given twenty-five years in prison?

16 A Yes, sir.

17 Q Is that what you're doing right now?

18 A Yes, sir.

19 Q And you're gonna be in prison for a long, long time?

20 A Yes, sir.

21 Q Who was your lawyer in the case?

22 A Ms. Gail Lane.

23 Q That lady right back there?

24 A Yes, sir.

25 Q Who's your mama?

1 A Ms. Emily Clark.

2 Q Is she in the courtroom?

3 A Yes, sir.

4 Q Where is she?

5 A She's back there behind Ms. Lane.

6 Q Is the other lady kin to you too?

7 A That's my godmother.

8 Q What's her name?

9 A Ms. Alberta Hayes.

10 Q How old are you now, Corey?

11 A Twenty-four, sir.

12 Q And how old were you when this happened?

13 A Twenty-one.

14 Q Let me show you documents. Mr. Mears will show them to
15 you. But is this the accusation that you pled to? That's what
16 you'd been originally charged with in the indictment?

17 A Yes, sir.

18 Q That shows the sentence you got, twenty-five years in
19 prison?

20 A Yes, sir.

21 Q Did you know the Judge was gonna give you twenty-five
22 years when he gave you twenty-five years?

23 A No, sir.

24 Q That's what you got, twenty-five years in prison?

25 A Yes, sir.

1 Q To serve?

2 A Yes, sir.

3 Q Do you even know when you're gonna get out or do you
4 have any idea when you're gonna get out?

5 A I've got a TPM date.

6 Q A what?

7 A I've got a TPM date.

8 Q What's that?

9 A April of 2009.

10 Q So at least twelve more years you're gonna be in
11 prison?

12 A Yes, sir.

13 Q How long have you already been in prison?

14 A In all I've been in there about three and a half years.

15 Q How long did you live in Thomasville?

16 A Basically, all my life.

17 Q Did you grow up here?

18 A Yes, sir.

19 Q Where'd you go to school?

20 A Thomasville High School.

21 Q Did you graduate?

22 A Yes, sir.

23 Q What year?

24 A 1991.

25 Q Did you play sports?

1 A Yes, sir.

2 Q What'd you play?

3 A Played football.

4 Q What team were you on?

5 A I was on the '88 State Championship team.

6 Q Did you finish high school?

7 A Yes, sir.

8 Q Do you work?

9 A I don't work now.

10 Q When you worked, when you were out?

11 A Yes, sir; I was working.

12 Q Where were you working?

13 A Thomasville Home Furnishings.

14 Q How long did you work for them?

15 A About nine months.

16 Q Where'd you work before that?

17 A I think Habersham out of Camilla, Georgia.

18 Q And what'd you do for them?

19 A Putting up steel doors in prisons.

20 Q All right. How long did you work for them?

21 A About six months.

22 Q Did you work anywhere else?

23 A I worked at Shoney's before a few months and Cedar
24 River Seafood for a few months.

25 Q Have you always had a job?

1 A Yes, sir.

2 Q At the time you were arrested where were you working?

3 A I had just got fired from Thomasville Home Furnishings.

4 Q And what'd you do for Thomasville Home Furnishings?

5 A I was a material cutter.

6 Q Do you have a problem drinking?

7 A Yes, sir.

8 Q What do you drink?

9 A Just about everything. Beer, liquor.

10 Q You like alcohol?

11 A Yes, sir.

12 Q Back on April the 7th, did you know anything about --
13 1994, did you know anything about the Madison Street Deli being
14 robbed?

15 A No, sir.

16 Q How tall are you?

17 A Six two.

18 Q How much do you weigh?

19 A About one eighty-nine.

20 Q Is that about the same size you were back in '94?

21 A Probably so.

22 Q Are you still about the same skin color back then?

23 A Yes, sir.

24 Q April the 7th, did you know anything about the Madison
25 Street Deli getting robbed?

1 A No, sir.

2 Q Did you ever hear about it getting robbed?

3 A Only on the news.

4 Q Did anybody tell you to watch the news?

5 A No, sir.

6 Q Which news is that? TV, radio or what?

7 A TV, the 12:00 news. Midday.

8 Q April the 9th, which would have been Saturday, did you
9 have occasion to see a Jeff Cromartie?

10 A Saturday? Yes, sir.

11 Q Do you know Jeff Cromartie?

12 A Yes, sir.

13 Q How do you know him?

14 A Through his cousin Gary.

15 Q Do you know Gary?

16 A Yes, sir.

17 Q And you know Thaddeus Lucas?

18 A Yes, sir.

19 Q How do you know him?

20 A Know all of them through Gary. Thad, I was going with
21 Thad -- I was going with this girl in the projects and Thad was
22 going with her sister.

23 Q Who was that? Who were you going with?

24 A Tonya Frazier.

25 Q Do you know Lisa Frazier -- Lisa Young?

1 A Yes.

2 Q How long -- Who is she?

3 A That's Gary's sister.

4 Q Tina Washington?

5 A Yes, sir.

6 Q How'd you know her?

7 A She has, she has two kids by one of my brothers.

8 Q So all you people knew each other?

9 A Basically; yes, sir.

10 Q How long has Jeff been down here?

11 A I don't know. Probably -- I don't really know.

12 Q Do you know where he was staying?

13 A With Lisa, Gary's sister.

14 Q Who all was staying with Lisa?

15 A Lisa, her kids, her husband.

16 Q Do you know if Jeff had a job?

17 A No, sir.

18 Q You don't know or he didn't have a job?

19 A I don't know.

20 Q What kind of shoes did you wear back then?

21 A Like Reeboks. They was white Nikes.

22 Q Is that what you wearing, the Nikes, when this

23 happened?

24 A White, white Nikes.

25 Q Do you know what the other folks were wearing?

1 A No, sir.

2 Q Excuse me. Would these be the shoes you were wearing
3 that night?

4 A Yes, sir.

5 Q Number 14-A. What time did you get up with Jeff on
6 that Saturday night before the robbery?

7 A I, I don't really know.

8 Q Where was -- You and Jeff, did ya'll talk about going
9 out there?

10 A (Nods head affirmatively)

11 Q What'd you talk about?

12 A We talked about going to the store when Thad got off.

13 Q Why were you going to the store when Thad got off?

14 A I was gonna get some beer.

15 Q What -- Did you have a car?

16 A No, sir.

17 Q Did Jeff have a car?

18 A No, sir.

19 Q Who had a car?

20 A Thad.

21 Q Where'd Thad work?

22 A At Domino's.

23 Q What kind of car did he have?

24 A A brown type hatchback car.

25 Q So you and Jeff talked about what?

1 A Just going to the store.

2 Q And doing what?

3 A Getting some beer.

4 Q Why'd you want beer?

5 A Because we -- I'm a alcoholic.

6 Q You needed some beer?

7 A I needed me a drink; yes, sir.

8 Q When Thad came home, what'd you do?

9 A Waited till we got consent from him that he was gonna
10 take us.

11 Q Who asked him to take you to the store?

12 A Jeff.

13 Q Did Thad take you to the store?

14 A Yes, sir. About fifteen minutes later when he got,
15 after he got there.

16 Q Who was driving the car?

17 A Thad.

18 Q Who was sitting in the front seat?

19 A Jeff.

20 Q Who was sitting in the back seat?

21 A I was.

22 Q Where'd you go?

23 A We went to the Junior Food Store out on 319.

24 Q Did you know where that was?

25 A Yes, sir.

1 Q Who told Thad where to go?

2 A Jeff.

3 Q Where did ya'll go? Did you go, like, to the front of
4 the store, or where'd you go?

5 A We pulled around to the side. Jeff and I got out.

6 Q Who got out first?

7 A Jeff got out first.

8 Q Who told Thad where to park?

9 A Jeff told him where to park.

10 Q When you got out of the car, what'd you do?

11 A It was a air conditioner vent right behind the store.
12 We hid behind that because there was a man in a white truck still
13 in the store.

14 Q Why'd you hide behind the vent?

15 A Wait until the man in the truck leave.

16 Q Where'd Thad go?

17 A He went down the street to the Providence Plaza
18 Apartment.

19 Q Why'd he go down there?

20 A Park and wait for us.

21 Q Did anybody tell him to go down there?

22 A I don't think so.

23 Q What'd you do after you were hiding behind the air
24 conditioning vent?

25 A After the man in the truck left we went to, we went in

1 the store, Jeff and me. He went in first and I went behind him.

2 Q Where'd you go?

3 A I went straight for the beer cooler.

4 Q And where was that?

5 A In the back of the store.

6 Q What'd Jeff do?

7 A He went down the first aisle as soon as you get in the
8 store.

9 Q What'd you do then?

10 A Well, I was reaching to open the door. I heard two
11 gunshots. I saw the flash of the first shot in the glass, you
12 know. So I ducked. I dropped down, you know, 'cause I hadn't
13 expected that. Then --

14 Q Who shot the gun?

15 A Jeff shot the gun.

16 Q Had you seen the gun before then?

17 A Not on his person.

18 Q So when you heard the two shots, what'd you do?

19 A I dropped down to the floor because, you know, it
20 shocked me. It was unexpected. So then --

21 Q Had you seen the man in the store?

22 A Yes, sir.

23 Q Where was he?

24 A He was sitting in a, on a stool behind the counter.

25 Q Did you see him when you came in?

1 A Yes, sir.

2 Q Did you say anything to him?

3 A No, sir.

4 Q Did Jeff say anything to him?

5 A No, sir.

6 Q Did he say anything to ya'll?

7 A No, sir.

8 Q What was he doing? Do you know?

9 A He was looking through some papers.

10 Q So you went back to the beer cooler?

11 A Yes, sir.

12 Q What were you doing at the beer cooler?

13 A I was open, getting ready to open the door.

14 Q What were you gonna get?

15 A I was gonna get some beer.

16 Q And after you heard the shots, what'd you do?

17 A I dropped down to the floor.

18 Q Were you scared?

19 A Yes, sir.

20 Q What'd you do then?

21 A I got up off the floor. He told me to get the money.

22 Q Sir?

23 A When I got up off the floor he told me to get the
24 money. I looked up. He was reaching across the counter trying
25 to open the register.

1 Q Who?

2 A Jeff was.

3 Q What'd you do then?

4 A So I ran behind the counter, you know. I pressed the
5 one key that I thought was gonna open it, but --

6 Q Did you see the man?

7 A Yes, sir. I looked down and saw the man. He wasn't
8 moving. So I --

9 Q Did you get any money?

10 A No, sir.

11 Q What'd you do then?

12 A While I was behind the counter I was looking down and
13 he had left and went back to the cooler and grabbed two twelve
14 packs, twelve, Budweiser, in the can. After he got the beer he
15 left out of the store and I left behind him.

16 Q Who's taller? You or Jeff?

17 A I am.

18 Q Who's the darkest back then? You or Jeff?

19 A I was.

20 Q Number 171. Who's that?

21 A That's me.

22 Q Is that the way you looked?

23 A Yes, sir.

24 Q 6 here, who's that?

25 A Jeff.

1 Q Is that the way he looked?

2 A Yes, sir.

3 Q Who ran out of the store with the beer?

4 A Jeff ran out of the store with the beer. I was
5 following behind him.

6 Q Where'd you go?

7 A I was right behind him.

8 Q Where'd you go?

9 A We went around back to the same side that we came on
10 in.

11 Q Did anything happen around there?

12 A While we was running one of the beer, one of the twelve
13 packs busted open and --

14 Q Who had it?

15 A Jeff had both of them.

16 Q When they broke --

17 A It busted open and some of the beer wasted out. So I
18 scooped it up and scooped them back in there except for two
19 beers. And then we ran on and got in the car that was waiting.

20 Q Where was the car waiting?

21 A At the Providence Plaza.

22 Q When you got in the car did you tell Lucas anything?

23 A No, sir.

24 Q Did you ever tell him anything?

25 A No, sir.

1 Q Where'd you go?

2 A Back to the Cherokee Projects.

3 Q Which way did you go? Do you know?

4 A Down Pinetree Boulevard.

5 Q Whose house did you go to in Cherokee?

6 A We went to Tina's house.

7 Q Did you go to another house?

8 A I went to Tonya's house after I got through drinking.

9 Q Who drank some beer?

10 A Tina, Jeff, Gary, me, Thad.

11 Q Is that the beer that'd been stolen?

12 A Yes, sir.

13 Q Who shot the man in the store?

14 A Jeff.

15 Q Did you shoot him?

16 A No, sir.

17 Q Did you have that gun?

18 A No, sir.

19 Q When's the first time you told anybody about what
20 happened?

21 A After I got arrested.

22 Q Who'd you talk to?

23 A Det. Johnson and Weaver.

24 Q Did you tell them what you've told us today?

25 A Yes, sir.

1 Q Did you know Jeff was gonna shoot that man?

2 A No, sir.

3 Q Did he say anything to that man that you heard before
4 he shot him?

5 A No, sir.

6 Q Did the man say anything to him before he shot him?

7 A No, sir.

8 Q Did you say anything to the man before Jeff shot him?

9 A No, sir.

10 Q Was that here in Thomas County, Georgia, Corey?

11 A Yes, sir.

12 Q Did you have anything to do with the Madison Street
13 Deli?

14 A No, sir.

15 Q Did you ever see the gun that night except when you saw
16 the flash?

17 A No, sir.

18 Q How many shots did you hear?

19 A Two shots.

20 Q How soon were they?

21 A Right behind one another.

22 Q (Claps hands twice)

23 A Yes, sir.

24 Q Where was the man when you saw him?

25 A Sitting behind the counter on a stool.

1 Q When you went behind the counter, where was he?

2 A Laying on the floor.

3 Q Was he bleeding?

4 A I didn't see any blood.

5 Q Was he dead? Do you know?

6 A I didn't see him breathing either.

7 Q Did you care about seeing him?

8 A Sir?

9 Q Did you care even about seeing him?

10 A I was scared.

11 Q Why were you scared?

12 A Because he, the man, the man ain't do nothing, you
13 know.

14 Q Are you scared of Mr. Cromartie?

15 A I was then.

16 Q Who had the gun?

17 A Cromartie did.

18 Q Did you know what he was gonna do then?

19 A No, sir.

20 MR. HARDY: Thank you.

21 CROSS EXAMINATION

22 BY MR. MEARS:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Mr. Clark, my name is Mike Mears. I'm one of the

1 attorneys representing Ray Jefferson Cromartie. If I ask you any
2 question that you don't understand, please ask me to repeat it.
3 All right? And could I ask you to please say yes or no or make a
4 verbal response so that the court reporter can take it down?

5 A Yes, sir.

6 Q Will you do that for me?

7 A Yes, sir.

8 Q Okay. Mr. Clark, you were indicted originally by a
9 Thomas County Grand Jury for the offense of Murder on the
10 accusation that you unlawfully, knowingly, willfully,
11 intentionally being a party thereto while in the commission of a
12 felony, to wit: the Armed Robbery, cause the death of Richard A.
13 Slyszy, a human being; weren't you?

14 A Yes, sir.

15 Q You were also in that same indictment indicted and
16 charged with the offense of Armed Robbery; were you not?

17 A Yes, sir.

18 Q Being a party to the armed robbery; were you not?

19 A Yes, sir.

20 Q I'm going to hand you what's been marked as Defendant's
21 Exhibit 13, and ask you to verify that indictment to make sure
22 that that is the indictment that a Grand Jury returned against
23 you?

24 A Yes, sir.

25 MR. MEARS: Your Honor, I would tender Defendant's

1 Exhibit 13 into evidence.

2 THE COURT: Any objection?

3 MR. HARDY: It's proper, Your Honor. All the
4 documents relating to the same thing should be in one
5 package. Normally, it's the indictment, plea, sentence
6 or whatever as one exhibit.

7 MR. MEARS: Your Honor, -- I'm sorry.

8 MR. HARDY: He can do it however he wants, but
9 normally the way it's done would be like that, Your Honor.
10 Show it to the witness.

11 THE COURT: It's admitted without objection.

12 MR. MEARS: Your Honor, could I ask that, for some
13 instruction. There is no normal way. There is a way
14 that each attorney does it. I'm sort of -- I realize
15 I'm not from Thomas County, but I sort of resent the
16 implication that I'm doing something wrong or out of the
17 normal. I can tell Mr. Hardy that it's never done the
18 other way in most of the courts of this state.

19 THE COURT: Gentlemen, let's move along.

20 MR. MEARS: Thank you, Your Honor.

21 Q Mr. Clark, you, when you were indicted you were
22 represented by an attorney; is that correct?

23 A Yes, sir.

24 Q You had indicated on direct examination that you were
25 represented by Ms. Gail Lane; is that correct?

1 A Yes, sir.

2 Q She was not your first attorney; was she?

3 A No, sir.

4 Q Judge Altman was your first attorney before he went on
5 the Bench; wasn't he?

6 A Yes, sir.

7 Q And so the attorney that first represented you is now a
8 Judge here in Thomas County; is that correct?

9 A Yes, sir.

10 Q Okay. And do you know whether Ms. Lane is related to
11 Mr., to Judge Altman or not?

12 A That's her husband.

13 Q Okay. Now, you were originally indicted for the
14 offense of Murder; weren't you?

15 A Yes, sir.

16 Q And you understand that if the district attorney had
17 sought the death penalty, made this -- made your case a death
18 penalty case, and you had been convicted of the offense of felony
19 Murder as set forth in this indictment, and the jury decided to
20 give you the death penalty, you could have gotten the death
21 penalty; couldn't you?

22 A Yes, sir.

23 Q And you were advised that by your attorneys; weren't
24 you?

25 A Yes, sir.

1 Q And you understand that had the district attorney
2 decided to seek the death penalty against you and the jury
3 decided that you were guilty of the offense of felony Murder,
4 that jury could have sentenced you to life without parole;
5 couldn't they?

6 A Yes, sir.

7 Q Assuming they heard enough fact and they applied the
8 law?

9 A Yes, sir.

10 Q And you were advised of that; weren't you?

11 A Yes, sir.

12 Q And that jury could have sentenced you to life
13 imprisonment for the offense of Murder?

14 A Yes, sir.

15 Q You were also indicted for the offense of Armed
16 Robbery; weren't you?

17 A Yes, sir.

18 Q And you were told what, what the penalty for Armed
19 Robbery was; wasn't you?

20 A Yes, sir.

21 Q And what was that?

22 A Life.

23 Q Life. Now, you didn't have to go to trial or even
24 plead to this indictment that's been marked as Defendant's
25 Exhibit 13; did you?

1 A No, sir.

2 Q You were allowed to plead to an accusation, something
3 that didn't go to the Grand Jury, but was drawn up by the
4 district attorney; weren't you?

5 A Yes, sir.

6 Q And you were allowed -- Well, excuse me. Are you the
7 same Corey Allen Clark that's set forth in this plea, Defendant's
8 14? Is that you, Mr. Clark?

9 A Yes, sir.

10 Q You were allowed to plead guilty, not to Murder. That
11 was dismissed; wasn't it?

12 A Yes.

13 Q You were allowed to plead guilty, not -- you didn't
14 have to plead guilty to Armed Robbery. You were allowed to plead
15 guilty to just plain Robbery?

16 A Yes.

17 Q Now, Mr. Hardy asked you when you -- Well, you were
18 also charged with Hindering the Apprehension of a Criminal also?

19 A Yes.

20 Q And for the Hindering the Apprehension of a Criminal
21 you received five years; did you not?

22 A Yes.

23 Q Mr. Hardy asked you that when you pled guilty and
24 received the twenty-five year sentence that you're now serving,
25 you didn't know what you were going to get; did you?

1 A No, sir.

2 Q Do you know what the maximum penalty for robbery is?

3 A No.

4 Q It's twenty years; isn't it?

5 A Yes.

6 Q Twenty. And then five for the hindering. So you
7 avoided a murder trial; didn't you?

8 A Yes.

9 Q And you avoided an armed robbery trial?

10 A Yes.

11 Q You avoided the possible death sentence?

12 A Yes.

13 Q And you avoided the possible life without parole?

14 A Yes.

15 Q And you have a parole date now of the year 2009; is
16 that correct?

17 A Yes.

18 Q Excuse me. Do you recall the date that you pled to the
19 accusation? I should have asked you this earlier, Mr. Clark.
20 What is that date?

21 A December the 20th, 1995.

22 Q And in exchange for your testimony here today you were
23 given those sentences, allowed to plead to Robbery and Hindering
24 the Apprehension of a Criminal, and the prosecutors dismissed the
25 Murder charge and the Armed Robbery charge against you; didn't

1 they?

2 A Yes.

3 Q I'm showing you what's been marked as Defendant's
4 Exhibit 15. Have you ever seen that document before? Are you
5 the same Corey Allen Clark whose case, in criminal case 94-CR-
6 327, charged with Murder and Armed Robbery, are you the same one
7 whose case was dismissed on the 8th day of January 1996?

8 A Yes.

9 Q I'm, I'm sorry. I misspoke. A Motion to Dismiss was
10 on December the 20th of 1995. The order entered by the Court was
11 actually entered on the 8th day of January of 1996. Is that
12 correct?

13 A Yes.

14 Q And that was your case?

15 A Yes.

16 Q Okay. So on the same day that the prosecutors asked
17 the Court to dismiss the Murder charges you pled to Robbery?

18 A Yes.

19 Q And the same day that the prosecutors dismissed the
20 Armed Robbery charge you pled to Hindering the Apprehension of a
21 Criminal?

22 A Yes.

23 Q Okay. And that was all in exchange for your testimony;
24 wasn't it?

25 A Yes.

1 Q Okay. Now, Mr. Clark, you were originally arrested on
2 the 13th of April, 1994; weren't you?

3 A Yes.

4 Q At some time after April of 1994, you came to the
5 realization that you were in a lot of trouble; didn't you?

6 A Yes.

7 Q And you talked with your attorneys about it; didn't
8 you?

9 A Yes.

10 Q And your attorneys told you you were in a lot of
11 trouble; didn't they?

12 A Yes.

13 Q And some time after you had talked to your attorneys
14 you wrote a letter to the prosecutor offering your assistance in
15 this case; didn't you?

16 A Yes.

17 Q In exchange for some, cutting you some slack; didn't
18 you?

19 A Yes.

20 Q Those are my terms, not yours?

21 A Yes.

22 Q You wrote a letter August the 24th of 1994 offering
23 your assistance; didn't you?

24 A Yes.

25 Q Did you write the letter or did someone write it for

1 you?

2 A I wrote it.

3 Q Did anyone give you any advice as to what to put in the
4 letter?

5 A No, sir.

6 Q Did anyone give you any assistance or any guidance?

7 And I'm not talking about what your attorneys might have told
8 you. That's privileged. I'm asking you did anybody else give
9 you any help?

10 A No, sir.

11 Q Had you had any conversations with any prosecutor or
12 any detective about helping out with this case in exchange for
13 some help with your sentence?

14 A No, sir.

15 Q When you wrote Mr. Hardy back in August of 1994, you
16 were expecting him to respond to that letter; didn't you?

17 A Yes, sir.

18 Q You were expecting him to take you up on your offer;
19 didn't you?

20 A I didn't know if he was gonna do that or not.

21 Q You were represented by attorneys at that time; weren't
22 you?

23 A Yes.

24 Q And you knew you were in trouble; didn't you?

25 A Yes.

1 Q And you knew you had to do something to protect
2 yourself; didn't you?

3 A Yes.

4 Q Do you remember telling Mr. Hardy, "I'm writing because
5 I'm willing to turn State's evidence against the other co-
6 defendants in this case"?

7 A Yes.

8 Q Do you recall telling him that?

9 A Yes.

10 Q Now, what other co-defendants were you referring to at
11 that time? And this is August of '94. Do you remember who your
12 co-defendants were at that time?

13 A Mr. Cromartie and Mr. Lucas.

14 Q And you did that to protect yourself; didn't you?

15 A Yes.

16 Q Okay. Had you had any discussions with Mr. Young about
17 your case after you were arrested? Mr. Gary Young?

18 A No, sir.

19 Q And Mr. Gary Young was a friend of yours; wasn't he?

20 A Yes.

21 Q A good friend of yours; wasn't he?

22 A Yes.

23 Q Had ya'll been in jail together by August of '94?

24 Ya'll had spent some time in jail at that time; had you not?

25 A Yes.

1 Q Okay. Now, how good of friends were you with Thaddeus
2 Lucas?

3 A I, I didn't really know him too well.

4 Q Did you consider him a friend?

5 A Yes.

6 Q You didn't know Jeff Cromartie very well at that time;
7 did you?

8 A No, sir.

9 Q He'd only arrived in town just a few weeks before all
10 this happened; didn't he?

11 A Yes, sir.

12 Q And you hadn't had any, really any conversations or
13 anything with him; had you?

14 A No, sir.

15 Q Now, you're related to Tina Washington; aren't you, in
16 some way?

17 A No, sir.

18 Q Do you recall ever referring to her as your sister?

19 A Yes.

20 Q What is the nature of the relationship with Tina
21 Washington?

22 A She has two kids by one of my brothers.

23 Q Which brother is that, Mr. Clark?

24 A My brother named Chester.

25 Q Is he your younger brother or older brother?

1 A Older brother.

2 Q Okay. And you were friends with Tina Washington?

3 A Yes.

4 Q Close friends; weren't you?

5 A Yes.

6 Q And even though there was no official relationship
7 between your brother and Tina, you considered her your sister;
8 didn't you?

9 A Yes.

10 Q Or some people might say sister-in-law?

11 A Yes.

12 Q You were that close; weren't you?

13 A Yes.

14 Q How long had you know Mr. Gary Young in April of 1994?

15 A I had, I had known him, like, since, like the seventh
16 grade.

17 Q Ya'll grew up together; didn't you?

18 A Yes.

19 Q Did ya'll play football together?

20 A Not together.

21 Q He played football too though; didn't he?

22 A Yes, sir.

23 Q You were good friends with Gary Young; weren't you?

24 A Yes.

25 Q Okay. Before April the 10th of 1994, the time of the

1 Junior Food Store incident, you had seen that gun before, the one
2 we've all been talking about? You had seen it before; hadn't
3 you?

4 A Yes.

5 Q It's been marked State's Exhibit 62. You had seen that
6 gun before; hadn't you?

7 A Yes.

8 Q You'd seen that gun in Tina Washington's apartment;
9 hadn't you?

10 A Yes.

11 Q You'd seen that gun on the dresser in Tina Washington's
12 apartment; hadn't you?

13 A Yes.

14 Q And you knew whose gun it was; didn't you?

15 A Yes.

16 Q And you knew it was Gary Young's gun; didn't you?

17 A Yes.

18 Q And you knew he carried that gun around with him;
19 didn't he?

20 A I didn't know if he carried it on him.

21 Q Well, you knew he had it close by; didn't you?

22 A Yes.

23 Q Did he ever tell you why he carried a gun or why he had
24 a gun close by?

25 A No, sir.

1 Q Now, on the night of April the 9th, that's a Saturday
2 night, and then that Sunday morning, the 10th, going into the
3 early morning hours, you were at Tina's apartment; weren't you?

4 A Yes.

5 Q You were drinking beer there with Gary Young; weren't
6 you?

7 A Yes.

8 Q How many beers had you and Gary consumed on Saturday
9 night? I'm not talking about Sunday morning. Now, I'm talking
10 about Saturday night.

11 A I don't remember.

12 Q But you've admitted that you had a drinking problem in
13 those days; didn't you?

14 A Yes.

15 Q And it was a rather severe drinking problem; wasn't it?

16 A Yes.

17 Q It had cost you your job at Thomasville Home
18 Furnishings; hadn't it?

19 A Yes.

20 Q You'd been fired just, just about that time, about the
21 time all this happened because you just couldn't stay away from
22 the alcohol; could you?

23 A Yes.

24 Q Now, on that Saturday night you and Gary Young had been
25 drinking a lot of beer together; hadn't you?

1 A Yes.

2 Q And at some point that night had you and Gary gone out
3 to one of the stores and gotten some beer, got some beer and
4 brought it back to Tina's apartment?

5 A I, I don't remember.

6 Q Is it possible that you and Gary had gone out and, or
7 somebody had gone out and got beer and brought it back?

8 A Yes, sir.

9 Q Would it be a fair statement to say, Mr. Clark, that
10 during Saturday night there were a lot of people coming and going
11 from Tina's apartment and the other apartments right around
12 Tina's apartment?

13 A Yes, sir.

14 Q It was sort of like a family unit type of thing there;
15 wouldn't you agree?

16 A Yes, sir.

17 Q And some time during that night somebody went out and
18 got some beer? I'm talking about Saturday night now. Went out
19 and got some beer and brought it back; didn't they?

20 A Yes, sir.

21 Q What kind of beer did they bring back?

22 A Budweiser.

23 Q Twelve packs of Budweiser; wasn't it?

24 A Yes, sir.

25 Q And that was done on Saturday night before Sunday

1 morning ever came around; didn't it?

2 A Yes.

3 Q Okay. I hate to bring up that problem, but I'm going
4 to ask you some questions. You were drunk most of that day;
5 weren't you?

6 A Yes.

7 Q And please don't take offense at what I'm saying, but
8 you were pretty well drunk that whole day; weren't you?

9 A Yes.

10 Q And I'm talking about Saturday?

11 A Yes, sir.

12 Q You'd just lost your job, just recently before that,
13 and you were sort of drinking to get rid of it; wasn't you?

14 A Yes.

15 Q Can you estimate how many beers you had consumed during
16 Saturday afternoon up to midnight Saturday night?

17 A About ten.

18 Q Ten twelve ounces?

19 A Yes.

20 Q Now, you know Carnell Cooksey; don't you?

21 A Yes.

22 Q And he was there drinking that night too; wasn't he?

23 A I don't remember.

24 Q Let me ask it this way. Could he have been there and
25 you just don't remember him being there?

1 A Yes.

2 Q Mr. Clark, you don't remember a lot of things about
3 that night because you were drunk; isn't that true?

4 A Yes.

5 Q And you'd been drinking several days leading up to
6 Saturday; hadn't you?

7 A Yes, sir.

8 Q So would, would it be fair of me to say that you just
9 didn't start drinking Saturday afternoon, you had been bingeing or
10 drinking on sort of a binge up through that Saturday night?

11 A Yes.

12 Q Okay. And a lot of things -- Am I safe in assuming
13 that a lot of things are sort of blurry because of the alcohol
14 that you had consumed that whole period of time?

15 A Say it again?

16 Q That you have some trouble remembering some of the
17 things because when they were going on you were drunk?

18 A Yes, sir.

19 Q And I don't mean to use that word -- It didn't come
20 across the way I meant it. You were just really intoxicated?

21 A Yes.

22 Q And so your inability to remember things today, not
23 because you're not trying sometimes, it's just because you didn't
24 remember when they were going on; did you?

25 A Yes.

1 Q Because you were drunk. Now, according to your version
2 of what you remember on the night at the Junior Food, or the
3 morning of the Junior Food robbery and the death of Mr. Slyszy,
4 you first told Mr. Chuck Weaver and Lt. Johnson that you never
5 went behind the counter while you were in that store; isn't that
6 correct?

7 A Say it again?

8 Q In your first interview that you gave with Chuck
9 Weaver, didn't you tell him that you never went behind the store,
10 that neither, no one in that store went behind the counter?

11 A I don't think I did.

12 Q Okay. Do you recall the interview that you gave with,
13 or gave to Chuck Weaver and Lt. Melvin Johnson?

14 A Yes.

15 Q Okay. And it's your testimony that you never told them
16 that you didn't go behind the counter that night?

17 A No.

18 Q Okay. Is it because you don't remember or you didn't
19 go behind the counter that night?

20 A I did go behind it.

21 Q Did you tell them that you didn't go behind the
22 counter?

23 A I think I told them I did.

24 Q Okay. Now, according to your version of what happened
25 that night, it was Mr. Cromartie who ran out of the store with

1 two twelve packs of twelve ounce cans of beer in his arms; is
2 that correct?

3 A Yes, sir.

4 Q When you came around and went in, you went in first;
5 didn't you?

6 A No, sir.

7 Q Oh, you didn't?

8 A No, sir.

9 Q Did you ever tell anybody you went in first?

10 A No, sir.

11 Q Okay. You went in second?

12 A Yes.

13 Q Or third?

14 A Second.

15 Q Okay. What were you wearing that night?

16 A Some brown shorts and my white Nikes and a flowered
17 looking shirt.

18 Q Did you have a cap on?

19 A No, sir.

20 Q And I believe that your testimony was that you came in
21 and went straight to the beer aisle?

22 A Yes.

23 Q That's against -- As you go in the store that was over
24 against the wall on the other side?

25 A In the back.

1 Q You went immediately to the beer?

2 A Yes.

3 Q When you heard the shots that you've described in your
4 direct testimony, had you already taken the beer out of the
5 cooler?

6 A No, sir.

7 Q Was it that quick?

8 A Yes.

9 Q Now, that cooler had a rod between the handles on it so
10 that nobody could accidentally take beer out on a Sunday; didn't
11 it?

12 A Yes.

13 Q I assume that's what it was for.

14 A Yes.

15 Q There was a wooden pole or a wooden rod there. Had you
16 got to the point where you were taking that rod out?

17 A No, sir. I was reaching.

18 Q Had you touched it?

19 A No, sir.

20 Q Okay. And you heard two shots. I believe Mr. Hardy
21 said (claps hands twice) just like that?

22 A (Nods head affirmatively)

23 Q Now, you said you saw the flash from the first shot?

24 A (Nods head affirmatively)

25 Q How quickly did you turn your head?

1 A I didn't turn my head.

2 Q You didn't see either shot; did you?

3 A No, sir.

4 Q Your testimony was you hit the floor; didn't you?

5 A Yes.

6 Q Did you ever tell anybody that you saw the second shot?

7 A No.

8 Q When you hit the floor, did you stay down? Did you get
9 up? What did you do then?

10 A I stayed down like three seconds and then I got up.

11 Q Then what'd you do?

12 A That's when he told me to get the money, get the
13 register.

14 Q Now, where was he at that time?

15 A Reaching over the counter.

16 Q And you were way back by the beer?

17 A Yes.

18 Q And he's standing at the cash register, according to
19 your story, and he tells you to, come on up here and you get the
20 money out?

21 A Yes.

22 Q Is that, is that how you recall it? And did you know
23 how to operate that cash register?

24 A No, sir.

25 Q So the person that had the gun asked you to come up

1 from where the beer is, and ya'll had gone to get the beer?

2 That's your story; wasn't it?

3 A Yes.

4 Q So asked you then to leave the beer alone and come on
5 up and get in the cash register, and your story is you did that?

6 A Yes.

7 Q And the person that's standing at the cash register
8 then goes back, according to your story, and gets the beer?

9 A Yes.

10 Q Did you see that big display of beer right in front of
11 the cash register?

12 A No, sir.

13 Q Big stack of beer right there?

14 A No, sir.

15 Q Okay. So your recollection is that the person you've
16 identified as Ray Jefferson Cromartie left the cash register --
17 had that person, you've identified him as Jeff, had that person
18 ever gone behind the counter?

19 A No, sir.

20 Q In your presence?

21 A No, sir.

22 Q The person then goes back, all the way back to the beer
23 cooler, gets two twelve packs and runs out the door; is that
24 correct?

25 A Yes.

1 Q How much beer did you ever see Jeff Cromartie drink?

2 A Not much.

3 Q He wasn't a beer drinker; was he?

4 A Not much; he wasn't.

5 Q Isn't it a fact, you hardly ever saw him drink any
6 beer? Isn't that true?

7 A Yes.

8 Q You, you -- the times that you were around him, those
9 few times, you didn't see him drink beer; did you?

10 A Not much.

11 Q But your recollection is that he shoots the store
12 clerk, then tells you to come up and get the money, and then he
13 goes back and rushes back there and grabs two twelve packs of
14 twelve ounce cans in his hands and runs out the door? Is that
15 correct?

16 A Yes.

17 Q Did he put the gun in his pocket or where did the gun
18 go while he was grabbing up these two twelve packs of beer?

19 A I don't know. He must have put it in his pocket.

20 Q Now, two twelve packs of twelve ounce cans of beer is a
21 fair load; isn't it?

22 A Yes.

23 Q So the gun is somewhere, wherever the gun was, it
24 wasn't in his hands when he had these two twelve packs of beer
25 going out the front door?

1 A No, sir.

2 Q Now, did you ever see that gun in that store that
3 night?

4 A No.

5 Q Okay. You certainly didn't have it in your possession;
6 did you?

7 A No, sir.

8 Q This person that's standing up there that's (claps
9 hands twice) shot somebody just like that, then he yells for you
10 back by the beer on the floor, come on up here and get the money
11 out, and then that person rushes back and gets the beer and
12 rushes out the door and you're still behind the counter trying to
13 get the money out; aren't you?

14 A Yes.

15 Q Because you were behind the counter; weren't you?

16 A Yes.

17 Q You walked around that counter, walked down there right
18 where Mr. Slyszy was lying. He was right here and the cash
19 register was right there; wasn't he?

20 A I don't recall where he was.

21 Q Pretty close by?

22 A Yes.

23 Q Would you agree with that?

24 A Yes.

25 Q And you tried to get the money out, out of the cash

1 register?

2 A (Nods head affirmatively)

3 Q But you'd only gone there to get beer; hadn't you?

4 A Yes.

5 Q Now, Mr. Hardy asked you whether or not you were afraid
6 of Jeff Cromartie, and your testimony was, at that time. Were
7 you afraid of Gary Young?

8 A No, sir.

9 Q You, you were afraid of Jeff Cromartie but not afraid
10 of Gary Young. You went around the counter where Mr. Slys was
11 lying dead, tried to get the money out of the cash register. The
12 person with you had gone out with the beer, but that's why you
13 went there, to get the beer. That's your testimony; isn't it?

14 A Say it again?

15 Q You went there to get the beer but you ended up trying
16 to get money out of the cash register and the other person got
17 the beer?

18 A Yes.

19 Q So you decided not -- You decided you didn't want the
20 beer; you wanted the money?

21 A He grabbed the beer so I, I didn't think I needed to
22 grab none.

23 Q You were gonna grab the money?

24 A I couldn't open the register. I tried the one key, the
25 one key that I thought would open it. It didn't open it. So I

1 left it at that.

2 Q Had you ever tried to open a cash register before and
3 it didn't open?

4 A No, sir.

5 MR. MEARS: One moment, Mr. Clark. I'll be right
6 back.

7 Excuse me, Your Honor.

8 Q When you came out the door after you came back around
9 from trying to get into the cash register, did you stop at the
10 door, look back over your shoulder, check out the store, and say
11 goodbye to anybody?

12 A No, sir.

13 Q Did you stop at the door and look back to see what else
14 you could get that you hadn't already got?

15 A No, sir.

16 Q Did you stop at the door and look around to see if
17 there was any beer that you needed that you hadn't got?

18 A No, sir.

19 Q Did you go back over and see if you could get the cash
20 register open again?

21 A No, sir.

22 Q When you walked out the door, did you slowly walk
23 around the corner?

24 A No, sir.

25 Q Were you going fast?

1 A Yes, sir.

2 Q I believe you said you were wearing shorts?

3 A Yes.

4 Q Okay. You walked around the corner and somehow the
5 beer containers had been dropped, according to you, there in the
6 muddy area; is that right?

7 A Yes.

8 Q And you stopped to pick them up?

9 A Yes.

10 Q Where was the other person?

11 A He was ahead of me.

12 Q Okay. On down the road?

13 A Yes.

14 Q Now, had you ever been in that store before?

15 A Yes, sir.

16 Q Bought beer there on Saturday?

17 A No, sir.

18 Q Ever bought lottery tickets there?

19 A No, sir.

20 Q You'd been in that store before; hadn't you?

21 A Yes, sir.

22 Q You'd been in that store after you got off work at
23 night; hadn't you?

24 A No, sir.

25 Q Did you ever stop there on any of your pizza delivery

1 runs?

2 A I didn't deliver pizza.

3 Q I, I'm sorry. Did you ever stop there when Thaddeus
4 Clark was delivering pizzas?

5 A No, sir.

6 Q Excuse me. I got the name -- Thaddeus Lucas. Excuse
7 me.

8 A No, sir.

9 Q Your testimony is you never rode around with Thaddeus?

10 A No, sir.

11 Q Okay. But you knew where this store was before that
12 night; didn't you?

13 A Yes, sir.

14 Q And you'd been in there before; hadn't you?

15 A Yes, sir.

16 Q You'd bought beer in there before; hadn't you?

17 A No.

18 Q What did you buy?

19 A Food, potato chips, soda, things like that.

20 Q Now, where were you living at that time, Mr. Clark?

21 Where were you living at that -- in April? I'm sorry. In April?

22 A 230 Bartow Street.

23 Q Where is that in, where is that located in Thomasville?

24 I'm, I'm not from Thomasville. So when you say Bartow Street, I
25 don't immediately know where that is. Is it on the west side?

1 A On the south side.

2 Q South side. Near the Tallahassee Road, near W. Jackson
3 Street?

4 A It's near -- Yeah; near Jackson Street.

5 Q Out near Jackson Street?

6 A Like two blocks from Jackson Street.

7 Q Mr. Clark, I want to ask you, if you don't mind, would
8 you mind just stepping right down here and showing the ladies and
9 gentlemen of the jury, since I don't know where Bartow Street is,
10 would you -- Here is W. Jackson. I think we've already had
11 another witness identify the corner of Pinetree and W. Jackson.
12 W. Jackson Street here, and this is Pinetree. Could you locate
13 Bartow? Are you familiar enough with this?

14 A (Witness steps down from witness stand) Right here.

15 Q Okay. Bartow is right here?

16 A Right.

17 Q And which block did you live on?

18 A Right here on this corner.

19 Q Do you mind just putting a little circle right there?

20 A (Witness complies)

21 Q And would you just put your initial right there so I'll
22 know who it is.

23 A (Witness complies)

24 Q Thank you. You may take your seat now.

25 A (Witness returns to the witness stand)

1 Q So the W. Jackson Street and the Junior Food Store, how
2 far is that from Bartow Street? Bartow sort of comes out into W.
3 Jackson right there; doesn't it?

4 A Yes.

5 Q How far is that from where you lived? I, I know I'm
6 asking you to just sort of guess. But would you give us just
7 your own estimate?

8 A Half a mile.

9 Q Two minutes by car?

10 A Two minutes.

11 Q Now, Mr. Clark, when you were sentenced for the offense
12 of Robbery and the offense of Hindering the Apprehension of a
13 Criminal, you told Judge Horkan, the Judge that sentenced you,
14 you told Judge Horkan that you had not had any contact with Ray
15 Jefferson Cromartie prior to the day of the Junior Food Store
16 shooting; didn't you?

17 A I don't remember.

18 Q On the day that you entered your sentence, do you
19 recall being asked questions about how well you knew Jeff
20 Cromartie?

21 A Yes.

22 Q Okay. Do you recall being asked questions about how
23 close or how well you knew him?

24 A No.

25 Q You don't recall those?

1 A No.

2 Q Okay. I'm going to ask whether Mr. Bryant can find
3 that in the transcript and I'll be back to it in just a second.
4 I'm going to ask you some more questions. You knew that Gary
5 Young owned and had possession of a .25 caliber pistol. You knew
6 he had it in his possession after the Junior Food Store incident;
7 didn't you?

8 A Say again?

9 Q You knew that after the Junior Food Store incident, the
10 death of Mr. Slys, after you came back from there, you knew that
11 Gary Young had that pistol in his possession after that time;
12 didn't you?

13 A I didn't see it.

14 Q Well, you knew he had it before --

15 A Before; yes.

16 Q -- before April the 10th, before the Junior Food Store
17 incident; didn't you?

18 A Yes.

19 Q And you knew he had it in his possession after the
20 Junior Food Store incident; didn't you?

21 A Yes.

22 Q Because you gave a statement to that effect; didn't
23 you?

24 A Yes.

25 Q So you knew that, that Gary Young had the pistol before

1 the Junior Food Store and you knew he had it after the Junior
2 Food Store; didn't you?

3 A Yes.

4 Q Had you talked to him about that pistol?

5 A No, sir.

6 Q Had you borrowed that pistol from him?

7 A No, sir.

8 Q Had he loaned that pistol to you to hold or keep for
9 any reason?

10 A No, sir.

11 Q Okay. Mr. Clark, were you present in the Cherokee
12 Apartments the afternoon that, or, excuse me, the evening that
13 the West Side guys came over there and there was a shootout?

14 A Yes.

15 Q Were you in Mr. Lucas' presence when he had the gun
16 during that shooting?

17 A Say again?

18 Q Were you in his presence when he had the gun during
19 that shooting?

20 A Mr. Lucas?

21 Q I, I'm sorry. I apologize. Mr. Young. You knew that
22 Mr. Young had the pistol in his hands, in his possession that
23 afternoon, on the 12th, that evening when the guys from West Side
24 came over there; didn't you?

25 A Yes.

1 Q And the guys from West Side had originally come to see
2 you; hadn't they?

3 A I don't know.

4 Q Did one of them stop you and ask you any questions or
5 flash a gun in your face in any way?

6 A No, sir.

7 Q So if anybody said that they put a gun in your face
8 they were incorrect; is that correct?

9 A Yes, sir.

10 Q Okay. So nobody put a gun in your face?

11 A No, sir.

12 Q But you were there and you saw those guys; didn't you?

13 A Yes, sir.

14 Q And then you saw Gary Young shooting at them; didn't
15 you?

16 A I didn't see it.

17 Q Did you hear the gunshots?

18 A Yes.

19 Q Okay. And the gunshots that you heard Gary Young fire
20 that evening were just like this (claps hands twice), just like
21 you heard in that store; wasn't it? Same gun, same bullets, same
22 person?

23 A Say again?

24 Q Or was it? Who fired the gun on April the 12th, 1994
25 in the Cherokee Apartments? Who fired it?

1 A I didn't see who was shooting. I was inside the
2 apartment.

3 Q Okay. You knew Gary Young had the gun; didn't you?

4 A Yes.

5 Q You knew he had used it; didn't you?

6 A I don't know if he used it or not.

7 Q You never had any conversations with him about it?

8 A No, sir.

9 Q Now, I'm, I'm still a little confused about what you
10 knew concerning Gary Young and the beer that night. And, please
11 forgive me. You said that you were drinking beer with Gary Young
12 on Saturday afternoon?

13 A Yes.

14 Q You were drinking beer with Gary Young on Saturday
15 night?

16 A Yes.

17 Q And then you were drinking beer with Gary Young Sunday
18 morning?

19 A Yes.

20 Q At some point during that time, your memory is that you
21 and Gary Young never went to get beer --

22 A No.

23 Q -- together? Who was, who was supplying you with all
24 this beer?

25 A I don't know.

1 Q It just kept coming; didn't it?

2 A Yes.

3 Q Until it ran out?

4 A Yes.

5 Q And you and Gary had been drinking Saturday afternoon
6 and Saturday night, early into Sunday morning and the beer gave
7 out; didn't it?

8 A Yes.

9 Q And then you went to get some more beer; didn't you?

10 A Yes.

11 Q Okay. Just one moment, please. I'd asked you a
12 question earlier, Mr. Clark, and I'm almost through. I had asked
13 you a question earlier as to whether or not at the time of the
14 sentencing, the question I asked you was, "Mr. Clark, during your
15 sentencing hearing you told Judge Horkan that you were, had not
16 had any contact with Mr. Cromartie prior to the day of the Junior
17 Food Store shooting". And you said you didn't recall having made
18 that statement. I want to show you a -- I'm going to show you
19 just a couple of points to sort of refresh your memory. I'm
20 showing you what is a transcript of the hearing where you entered
21 your sentence.

22 MR. MEARS: Judge, may I stand here for just a moment?

23 THE COURT: Yes, sir.

24 BY MR. MEARS:

25 Q I call your attention to this part right here where

1 you're being asked questions by Mr. Hardy. And he says -- Just
2 read there, read on and see if that refreshes your recollection.

3 A (Witness complies)

4 Q Mr. Clark, have you had a chance to review that portion
5 of the transcript?

6 A (Nods head affirmatively)

7 Q Does that refresh your recollection about the questions
8 and answers you were giving at the time of your sentencing?

9 A Yes, sir.

10 Q Do you recall being asked this question by Mr. Hardy,
11 "Why did he shoot the man?" Do you recall your response, "I
12 don't know."?

13 A Yes.

14 Q Then do you recall Mr. Hardy asking, "Had you ever seen
15 the man before?" And Mr. -- And you said, "No, sir." Okay?

16 A Yes.

17 Q Then, talking about Mr. Slys at that point?

18 A Yes..

19 Q Okay. This is Mr. Hardy, "Mr. Cromartie, from your
20 knowledge what, what -- had he ever seen the man before?" And
21 you said, "Not to my knowledge."?

22 A Yes, sir.

23 Q And you'd been in the store before; is that correct?

24 A Yes.

25 Q Had, had you ever seen Mr. Slys before?

1 A No, sir.

2 Q Now, do you recall being asked by Mr. Hardy, "Have you,
3 have you had any contact with Mr. Cromartie in Thomasville or
4 this area prior to this day the shooting occurred?" Do you
5 recall being asked that question?

6 A I don't recall.

7 Q Do you recall giving this answer, "No, sir."?

8 A (Shakes head negatively) I seen it on there.

9 Q Did I read it correctly?

10 A Yes.

11 Q And did I read your response correctly?

12 A Yes.

13 Q If this transcript is correct and if it accurately
14 reflects the question and if it accurately reflects your answer,
15 that would have been a lie; wouldn't it?

16 A Yes.

17 Q In that sentencing hearing you stood before this Court,
18 you raised your hand and you swore to God to tell the truth;
19 didn't you?

20 A Yes.

21 Q You were asked under oath whether you had had any
22 dealings or any contact with Mr. Cromartie prior to the day of
23 this shooting and you said no; didn't you?

24 A What do you mean by any dealings?

25 Q Well, let me read the question again. You were asked,

1 "Had you any contact with Mr. Cromartie in Thomasville or this
2 area prior to this day the shooting occurred?" You answered,
3 "No, sir." That was a lie; wasn't it?

4 A Yes.

5 Q Mr. Clark, you didn't want to have any contact with
6 Jeff Cromartie; did you?

7 A Before the accident?

8 Q The reason you answered that question, you were trying
9 to distance yourself from Ray Cromartie; weren't you?

10 A Yes.

11 Q To protect yourself; weren't you?

12 A Yes.

13 Q And you didn't have to stand trial for murder; did you?

14 A No, sir.

15 Q You didn't have to stand trial for armed robbery?

16 A No, sir.

17 Q And you did protect yourself; didn't you?

18 A Yes.

19 MR. MEARS: Thank you. Nothing further.

20 REDIRECT EXAMINATION

21 BY MR. HARDY:

22 Q Who shot the man in the head twice, Corey?

23 A Mr. Cromartie.

24 Q This apprehension of this criminal that you pled guilty
25 to was who?

1 A Sir?

2 Q The criminal you pled to was Mr. Cromartie's killing --

3 MR. MEARS: Your Honor, I'm going to object --

4 A Yes, sir --

5 MR. MEARS: -- and I have a motion to make outside the
6 presence of the jury.

7 THE COURT: All right, sir.

8 Ladies and gentlemen, let me ask that you step to your
9 jury room for just a moment.

10 (Whereupon the jury retires from the courtroom, after
11 which the following transpired)

12 THE COURT: If you'd wait until the door is shut.

13 All right, sir.

14 MR. MEARS: Your Honor, at this time I would ask the
15 Court to declare a mistrial. Mr. Hardy has accused Mr.
16 Cromartie of being a criminal, not once, but twice in the
17 presence of the jury. He's placed his character into
18 evidence by accusing him of being a criminal. He has not
19 been convicted in this case. He's not been convicted yet.
20 He's not designated as a criminal. To so designate him and
21 to so call him a criminal is to place his character into
22 evidence. And I would ask the Court to declare a mistrial.
23 It's very clear, Judge. You can't do that. And to, to
24 accuse someone of being a criminal -- he could stand here
25 all day and argue to the jury that he committed an act,

1 that's what he's on trial for. But he can't characterize
2 him as a criminal because that has specific legal
3 implications. And I would ask the Court to declare a
4 mistrial.

5 THE COURT: Mr. Hardy?

6 MR. HARDY: I was referring to what he had already said
7 this man had done, pled to in court. I was asking him if
8 the count that he had pled to was in reference to this
9 particular man, referring to exactly what Mr., Mr. Mears had
10 already asked him on direct examination. He said, did you
11 plead guilty to count two, Hindering the Apprehension of a
12 Criminal. He never said the criminal he pled to hindering
13 the apprehension was Mr. Cromartie. I was filling in what
14 he had left out on his, his cross examination. He asked
15 him, I think, must have been five times. He introduced
16 certified copy after certified copy. He said, you pled
17 guilty to Hindering the Apprehension of a Criminal. He
18 didn't read the rest of the sentence, said, to wit: Ray
19 Jefferson Cromartie, charged with the offense of Murder.
20 And that's what I was asking him. And that's what he had
21 already asked him on cross examination three or four times,
22 Your Honor. Not referring to in the literal sense of having
23 been convicted, but what was in the paper that he had
24 already asked him about. And that's exactly what he's
25 introduced into evidence, exactly what's written on the

1 piece of paper, Your Honor.

2 MR. MEARS: Your Honor, that's about as different as
3 night and day, legally and factually. What Mr. Clark pled
4 guilty to and why he pled guilty to it is between Mr. Clark,
5 Mr. Hardy and God. This man cannot be characterized as a
6 criminal in a court of law before a jury by a prosecutor
7 until he, himself, has placed his character into evidence.
8 That's what Mr. Hardy did, for whatever reason he did it.
9 It can't be done. And I would ask the Court to declare a
10 mistrial. This is one of the most egregious offenses that a
11 prosecutor can commit, particularly in a case that's still
12 at the stage where the jury hasn't even begun to deliberate.
13 This is not argument. This is evidence being presented to
14 the jury through a witness. There's the distinction. He
15 asked him the question about this individual and categorized
16 him as a criminal. Judge, he crossed the line. He put his
17 character into evidence. And I would ask the Court to take
18 the appropriate act and declare a mistrial.

19 THE COURT: All right. Thank you, sir.

20 Gentlemen, at this time I don't believe that the
21 characterization was an intentional crossing of the line on
22 behalf of the Prosecution. I think that it may have been in
23 error. At this time I think curative instructions will
24 satisfy the matter.

25 Mr. Mears, if you would like to proffer some curative

1 instructions, I'll be happy to consider them. Otherwise, I
2 will structure them myself.

3 MR. MEARS: Your Honor, I'll leave that with the Court.
4 I think the Court is much more adapted to providing curative
5 instructions. I would like to, after you've given the
6 curative instructions, to renew my Motion for a Mistrial.
7 Would the Court allow me to do that some time later without
8 waiving it?

9 THE COURT: Yes, sir.

10 MR. MEARS: I don't want to just stand up in front of
11 the jury and do it again just after you've just given them
12 curative instructions. I think that's somewhat
13 disrespectful. It appears to be disrespectful to the Court
14 and I don't want to appear to be disrespectful, because I'm
15 not. But I don't want to waive it, so I want to make sure
16 that I renewed my Motion for a Mistrial as soon as you've
17 given the curative instructions, if the Court will allow me
18 to do that?

19 THE COURT: Yes, sir.

20 MR. MEARS: Thank you.

21 THE COURT: You may bring the jury in.

22 THE COURT: Mr. Sheriff, could I see you for just a
23 moment?

24 SHERIFF: Yes, sir.

25 (Whereupon the jury returns to the courtroom,

1 after which the following transpired)

2 THE COURT: Ladies and gentlemen, I believe at this
3 time that we are ready to proceed with the cross examination
4 of this particular witness.

5 However, prior to doing so, let me simply ask you to
6 disregard the last remark or characterization in the
7 question as phrased by the district attorney insofar as it
8 referenced or may have characterized or otherwise presumed
9 that the Defendant on trial was a criminal, or characterized
10 as a criminal. The statements in the context and under the
11 circumstances which they were made were improper and you
12 should not infer or assume anything from that statement.
13 And you are instructed to completely disregard that
14 particular characterization.

15 Mr. Mears, you may proceed.

16 MR. MEARS: I defer to Mr. Hardy at this point, Your
17 Honor.

18 THE COURT: All right.

19 BY MR. HARDY:

20 Q I asked you earlier, he was talking about -- did you
21 have any day to day contact with Mr. Cromartie before the
22 shooting?

23 A No.

24 Q Did you pal around with him?

25 A No, sir.

1 Q Was he your best buddy?

2 A No, sir.

3 Q Did you socialize with him?

4 A On and off.

5 Q He wasn't your bosom buddy; was he?

6 A No, sir.

7 Q And he referred to this letter you wrote. Did you just
8 write that on your own?

9 A Yes, sir.

10 Q Did your lawyer know you were gonna write it?

11 A No, sir.

12 MR. HARDY: 174. We've already -- They already have
13 a copy of it, Your Honor.

14 Q Can you identify this for me?

15 A Yes, sir.

16 Q What's that? Is that the letter we're talking about?

17 A Yes, sir.

18 Q How about reading it?

19 A It says, "Dear Mr. Hardy. My name is Corey A. Clark,
20 Sr. I have been charged with armed robbery and murder in
21 connection with the incident at the Junior Food Store on U. S.
22 319 back in April. The incident happened as follows: After
23 receiving a ride with Thaddeus Lucas, Jeff Cromartie and I
24 entered the store. All intents and purposes was to grab some
25 beer and flee the premises. Jeff entered first and ventured down

1 the aisle closest to the door. This was done in order to make
2 sure that the coast was clear outside the store. I proceeded
3 after him going down the aisle where the beer was located.
4 During all of this time the clerk was situated on a stool behind
5 the counter. As I approached the cooler I heard two shots fired.
6 I immediately turned and saw that the clerk was no longer atop
7 the stool. Cromartie was now positioned directly in front of the
8 counter. He yelled for me to get the money. All I thought was
9 it was only supposed to be a beer heist. As he reached across
10 the counter fumbling at the cash register I was still behind the
11 counter looking down at, at the victim. He was not moving so I
12 assumed that he was already dead. As I stood there standing in a
13 daze Cromartie sauntered up to the cooler removing two twelve
14 pack Budweiser boxes. We both, we both left the store, me
15 trailing behind Cromartie. As I reflect on the moments preceding
16 the incident I never knew that he possessed a gun. I'm writing
17 because I want to turn State's evidence against the other co-
18 defendants in this case. I've never done anything vaguely
19 resembling this in my life. I don't feel that my family and I
20 should suffer as much as the main perpetrators in this matter. I
21 have a loving family and I have -- I want to be a father to my
22 kids. My father, the late Mr. Roscoe Clark, Jr., taught me to be
23 truthful and honest with myself. That way I could be truthful
24 and honest to others. So please consider one thing. Without my
25 cooperation a murderer will still be on the loose. I, myself,

1 may be lucky to still be alive. I don't really know this guy
2 Cromartie or what would have happened if he would have had more
3 bullets in that gun. I might not have lived to turn him in. So
4 I'm asking you to please think this over and send me your
5 response."

6 Q Were you scared of him that night?

7 A Yes, sir.

8 Q Had you ever been remotely close to anybody getting
9 killed like that?

10 A No, sir.

11 Q Did you even know what to think or do?

12 A No, sir.

13 Q And I think he's already characterized you as been
14 drinking a lot?

15 A Yes, sir.

16 Q He doesn't drink a lot?

17 A No, sir.

18 Q And Gary Clark had drunk a lot?

19 A Not as much as I did.

20 Q Who was more sober? You or Jeff?

21 A Jeff.

22 Q Who was telling everybody what to do?

23 A Jeff.

24 MR. HARDY: We'd offer 174, I think the number was,
25 Judge, the letter.

1 MR. MEARS: No objection.

2 THE COURT: It's admitted without objection.

3 BY MR. HARDY:

4 Q You told the police what happened out there?

5 A Sir?

6 Q Did you tell the police what happened out there?

7 A The police?

8 Q Yes, sir. When they talked to you?

9 A Detectives Johnson and Weaver.

10 Q Did you tell your lawyer what happened?

11 A Yes, sir.

12 Q Ms. Lane and Mr. Altman?

13 A Yes, sir.

14 Q Did you shoot anybody?

15 A No, sir.

16 Q Who shot the man in the head twice?

17 A Jeff.

18 MR. HARDY: Thank you.

19 RECROSS EXAMINATION

20 BY MR. MEARS:

21 Q Mr. Clark, State's Exhibit 174, your letter was written
22 in August. When did you give your attorney a copy of that? When
23 did you give your attorney a copy of that letter?

24 A I didn't make a copy for my attorney.

25 Q So your attorney got that from the district attorney

1 after you had written it?

2 A Yes, sir.

3 Q Okay. Now, in the letter you indicated that you wanted
4 to turn State's evidence against your co-defendants. And in the
5 letter you said that you had been taught to always be truthful to
6 yourself and to others; is that correct?

7 A Yes, sir.

8 Q And you invoked the name of your late father --

9 A Yes, sir.

10 Q -- when you wrote that letter? "My father, the late
11 Mr. Roscoe Clark, Jr., taught me to be truthful and honest with
12 myself. That way I can be truthful and honest to others." And
13 your father taught you that; didn't he?

14 A Yes.

15 Q And that was in August of 1984. Mr. Clark, do you
16 recall me asking you the question -- Well, let me just ask it
17 again. I asked you whether or not you had ever told anyone that
18 you had, you didn't go behind the counter to the store. Do you
19 recall me asking you that question?

20 A Yes.

21 Q Right here, less than twenty minutes ago?

22 A Yes.

23 Q Do you recall your response then, that you had never
24 told anybody that?

25 A Yes.

1 Q And you told these ladies and gentlemen of the jury
2 that you had gone behind the counter of that store?

3 A Yes.

4 Q And you told these ladies and gentlemen of the jury you
5 had never told anybody that you hadn't gone behind the counter of
6 the store?

7 A Yes.

8 Q Now, I asked you that question about three times and
9 you told these ladies and gentlemen of the jury after having
10 raised your hand and swore to God Almighty that you were going to
11 tell them the truth, you told them you never said to anyone that
12 you had never been behind the counter of that store. Do you
13 recall that?

14 A Yes.

15 Q Do you recall being asked during your sentencing
16 hearing, Mr. Hardy asked you, "You didn't go around the counter
17 where the man was?" Defendant Clark: "No, sir". Do you recall
18 telling that lie to Judge Horkan under oath at the time of your
19 sentencing?

20 A No.

21 Q Do you want to look at it?

22 A I've seen it.

23 Q You rolled -- Mr. Clark, you took an oath when you got
24 this deal to tell the truth, when you got this deal to testify
25 against Jeff Cromartie, when you got this deal to save yourself

1 from the possible electric chair, when you got this deal to get a
2 parole in the year 2009, you swore to tell the truth in order to
3 get the deal. You lied when you were getting the deal; didn't
4 you?

5 A No, sir.

6 Q You told Judge Horkan that you'd never been around
7 behind that counter? It's in the transcript. That was a lie;
8 wasn't it?

9 A Yes. If that's what I said it was a lie.

10 Q And it was just as big a lie as when you invoked the
11 name of your poor dead father in that letter; wasn't it? Wasn't
12 it, Mr. Clark?

13 A No.

14 Q You lied then, you invoked the name of your father and
15 you lied and you invoked the name here in the courtroom and you
16 lied again because you did it to protect yourself; didn't you?

17 A I didn't lie.

18 Q But you sure protected yourself; didn't you? Didn't
19 you, Mr. Clark?

20 A Yes.

21 MR. MEARS: Nothing further.

22 THE COURT: Anything further of this witness?

23 MR. HARDY: I think that's all we can -- that's
24 allowed, Your Honor. There's no more allowed. Back and
25 forth, back and forth is all you have.

1 THE COURT: You may step down.

2 Ladies and gentlemen, it's 1:00 P. M. It looks like a
3 good opportunity -- we're going to have a lunch recess and
4 take our lunch recess at this time. We'll -- Will
5 approximately an hour be enough time? All right. Start
6 back at 2:00 o'clock.

7 Please recall the cautionary instructions that I've
8 given you earlier and adhere to those instructions.

9 We'll be in recess until 2:00 P. M.

10 Everyone remain seated while the jury retires.

11 (Whereupon the jury retires from the courtroom,
12 after which the following transpired)

13 THE COURT: Mr. Mears, unless the question is in regard
14 to some, something relevant in this case, and if you can
15 show me that a detective in questioning someone threatened
16 someone with the electric chair or electrocution, fine.
17 That would be admissible and relevant. But we've already
18 been over the fact of whether or not electrocution, the fact
19 that the State carries out the death penalty by
20 electrocution or some other means is relevant, I think; is
21 that correct?

22 MR. MEARS: Judge, if I use the word "Electrocution" it
23 was --

24 THE COURT: You used the word "Electric chair" which is
25 implying the same thing and it's not going to be strung out

1 before this jury.

2 MR. MEARS: Judge, I understand the Court's ruling.
3 We've, we've hashed that out. I've made my argument. And I
4 understand the Court's ruling. I did not use the term
5 "Electric chair" purposefully. It was something that -- I
6 don't even consciously remember having used it during that
7 questioning. I'll apologize to the Court because I
8 understand what the Court's ruling was. I did not
9 transgress and I was not trying to circumvent. You had told
10 me I couldn't use the word "Electrocution". I assumed that
11 that meant electric chair also. My use of the word was
12 inadvertent and it was not meant to skirt or to flaunt the
13 Court's previous ruling. It's simply a -- The best I can do
14 is an apology to the court. It's a matter of habit from
15 having done it in other cases. And I apologize to the Court
16 for having used the word "Electric chair". It was not
17 intentional.

18 THE COURT: I'm not going to admonish you again in this
19 fashion. Do you understand that?

20 MR. MEARS: I understand that.

21 THE COURT: All right, sir.

22 MR. MEARS: And, and I appreciate the Court's not
23 admonishing me for violating your rule in front of the jury.
24 I understand that you had that right to do that. Quite
25 frankly, Judge, I don't recall having used the words. I'm

1 sure I did if you said I did, but it was not done
2 intentionally.

3 THE COURT: All right, sir.

4 We'll be in recess until 2:00 P. M.

5 THE COURT: Mr. Mears, it was not a mistake. What I
6 mean by, "in this fashion", is that the next time it is
7 used, if it's not in an appropriate situation as I have
8 described earlier, then you understand the powers of the
9 Court, contempt powers of the Court.

10 MR. MEARS: Absolutely. I, I certainly don't take the
11 Court's previous ruling lightly. And I certainly understand
12 that if I transgress that the Court can and will take
13 appropriate action.

14 THE COURT: Thank you, sir.

15 MR. MEARS: And my only response is, Judge, I didn't
16 mean to do it.

17 THE COURT: I understand.

18 MR. MEARS: I understand that may not be enough, but I
19 did not consciously --

20 THE COURT: Well, I, I recall there was somewhat an
21 emotional string of questions. But you are a professional.
22 You understand the Court's ruling, so abide by the Court's
23 ruling.

24 MR. MEARS: Absolutely.

25 THE COURT: We'll be in recess until 2:00 P. M.

1 (Whereupon the Court is recessed for lunch, and upon
2 reconvening at approximately 2:05 P. M. the following
3 transpired outside the jury's presence)

4 THE COURT: Ladies and gentlemen, are we ready to
5 proceed?

6 MR. HARDY: Yes, sir.

7 THE COURT: You may bring the jury in.

8 Mr. Hardy, who is your next witness?

9 MR. HARDY: Ken Collins.

10 (Whereupon the jury returns to the courtroom,
11 after which the following transpired)

12 THE COURT: Would you raise your right hand, please,
13 sir?

14 Do you swear or affirm that the evidence you will give
15 this Court and this jury in the matter now pending before
16 the Court will be the truth, the whole truth and nothing but
17 the truth, so help you God?

18 AGENT COLLINS: I do.

19 THE COURT: Mr. Hardy?

20 AGENT KENNETH R. COLLINS

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. HARDY:

24 Q State your name for us, please?

25 A Kenneth R. Collins.

1 Q Where are you employed?

2 A I'm employed with the Georgia Bureau of Investigation.

3 Q How long have you been with them, please, sir?

4 A I've been with them approximately eleven years.

5 Q Where'd you work before that?

6 A At Georgia State Patrol for thirteen years.

7 Q And what do you do for the G. B. I., please, sir?

8 A I'm a field agent with Region 9, Thomasville, and I
9 also serve as a crime scene specialist for this region.

10 Q And are you a licensed law enforcement officer in the
11 state of Georgia?

12 A Yes, sir; I am.

13 Q Are you certified?

14 A I am certified; yes, sir.

15 Q Tell us a little bit about your, your job, what you do
16 as a crime scene technician?

17 A As a crime scene specialist with the State of Georgia
18 it's, it's my duty to, to maintain the vehicle that carries all
19 the specialized crime scene equipment for working crime scenes
20 and we respond to an eleven county area to assist in processing
21 crime scenes within the area.

22 Q How long have you been doing that, Ken?

23 A Approximately seven years.

24 Q And tell us a little about, about your training and the
25 schools you've been to and that kind of thing?

1 A In addition to the normal training for an investigator
2 or a G. B. I. agent, which is a, about a three month school, we
3 have gone back to numerous and various one week courses that
4 involve various aspects of crime scenes and crime scene
5 processing on how to collect and preserve evidence.

6 Q Did you attend classes on footprints?

7 A Yes, sir.

8 Q Fingerprints?

9 A Yes, sir.

10 Q How to take them?

11 A Yes, sir.

12 Q About the plaster casts?

13 A Plaster casts, blood, pattern analysis, photography.
14 We've had some in alternate light source uses, referred to as a
15 forensic light also known, sometimes they call it the laser
16 light, but it's not a true laser. Just, just various aspects of
17 the --

18 Q You've had training and experience on all those things?

19 A Yes, sir.

20 Q And even, I think, ballistics?

21 A Ballistics?

22 Q About guns, you know about guns a little bit?

23 A Nothing other than, than just using it as a weapon; no,
24 sir.

25 Q Go to a school up in Albany, New York for about a year

1 ago?

2 A Yes, sir. I went to the, the, a homicide course up
3 there that's put on by the State of New York Police Academy. And
4 it's a week long; yes, sir.

5 Q And you've been a crime scene man for how many years?

6 A Approximately seven years.

7 MR. HARDY: Your Honor, we'd offer him as an expert in
8 the field of crime scene specialty with the G. B. I.

9 THE COURT: Do you wish to inquire, Mr. Mears?

10 MR. MEARS: I don't have any objection and I have no
11 desire to voir dire as long as I understand that the
12 scope of the qualification is crime scene technicians.
13 There were several sub-categories with regard to
14 footprint, things like that. I would like to voir dire
15 if he's being offered for that expansive role.

16 MR. HARDY: Footprints, Your Honor, I think
17 fingerprint collection, photography, as he did in this
18 particular case of seizing, collecting of evidence which
19 he's done in this particular case.

20 MR. MEARS: Then I need to ask just a couple of
21 questions.

22 THE COURT: All right.

23 CROSS EXAMINATION

24 BY MR. MEARS:

25 Q Good afternoon, Mr. Collins.

1 A How are you, sir?

2 Q Mr. Collins, I want to ask you just a few questions
3 about your training and background within a couple of those sub-
4 specialty areas of crime scene investigation.

5 A Yes, sir.

6 Q With regard to the training that you've had with regard
7 to footprint evidence, what type of courses have you taken where
8 that the subject, the sole subject was footprint evidence, either
9 identification or the taking and/or preserving of footprints?

10 A I haven't had a specific course in, in, in footwear or
11 footwear impressions.

12 Q Right. And I'm referring to shoes rather than feet.

13 A Right. I understand what you're saying. I have had no
14 courses in analyzing or preparing these, these areas. It is a
15 part of evidence collection. And we've had several forty hour
16 courses in which we've had people come down from either the lab
17 or from other areas that have had extensive training in the
18 casting and collecting of this evidence. And we have been shown
19 how to mix, pour and collect these shoe track impressions.

20 Q Okay. Would it be a fair statement that your area of
21 expertise with regard to that particular subject is, is directed
22 only at the collection and preservation of footprints?

23 A That is correct.

24 Q Rather than --

25 MR. HARDY: That's what we're offering. It is not

1 as an expert to give the analysis. I think that's the
2 next witness. He's just the collection person.

3 MR. MEARS: All right. I have no objections to
4 Agent Collins being qualified as an expert in that
5 particular area.

6 Q The other area I would like to ask you about, Mr.
7 Collins, is the area of fingerprint.

8 A Yes, sir.

9 Q Is your -- Just tell me a little bit about the courses
10 you've taken with regard to fingerprint evidence as it relates to
11 crime scene evidence?

12 A We've had several courses on how to develop the
13 fingerprints, how to lift the fingerprints. And I've also had
14 one forty hour course through the F. B. I. in which we, it's an
15 advanced latent print examining course, where I did have some,
16 some exposure to identifying fingerprints.

17 Q Would you consider it an area of scientific expertise
18 in your part as to the identification and comparison of
19 fingerprints?

20 A No, sir; I don't consider myself an expert in that
21 area. The school is primarily designed to help us determine if
22 what we had developed and lifted was a identifiable or usable
23 print.

24 Q Would it be a fair statement to say that your area of
25 expertise in that area is the finding, locating and preserving

1 and lifting of latent prints?

2 A Yes, sir; that's correct.

3 MR. MEARS: I have no objections to Agent Collins'
4 expertise, Your Honor.

5 THE COURT: All right, sir. Mr. Hardy, the Court
6 will recognize Agent Collins as an expert in the field of
7 crime scene technology, as a crime scene technician,
8 collection of evidence regarding footprint evidence and
9 impressions, comparison, et cetera, and also as an expert in
10 the collection of fingerprint evidence.

11 REDIRECT EXAMINATION

12 BY MR. HARDY:

13 Q Mr. Collins, in reference to the case of the State of
14 Georgia involving the Madison Street Deli, were you called out to
15 that one?

16 A No, sir; I was not.

17 Q And were you called out to the one involving the Junior
18 Food Store on April the 10th of 1994?

19 A Yes, sir; I was.

20 Q And how did you get called out?

21 A I received a call from the Thomasville Police
22 Department requesting that I meet their investigators at the, at
23 that location on W. Jackson Street. I proceeded there and
24 arrived at approximately 4:30 A. M.

25 Q Who'd you meet there?

1 A I met with Inv. Chuck Weaver of the Thomasville Police
2 Department.

3 Q Was the scene already roped off when you arrived?

4 A Yes, sir; it had been secured.

5 Q And that's the proper procedure?

6 A Yes, sir.

7 Q And when you arrived, what'd you first do, Ken?

8 A The first thing I did was I talked with Inv. Weaver, or
9 Det. Weaver, and he basically explained to me what was going on,
10 what they had found out and, and what the crime scene consisted
11 of.

12 Q Okay. And then is that -- your training is to get an
13 overlay or overview of what's happening?

14 A Yes, sir.

15 Q Then at that time did you start your collection process
16 or analysis process?

17 A Yes, sir; I did.

18 Q What did you first do, Ken?

19 A The first area that I worked in on this particular
20 scene was the exterior portion of the parking lot area in which
21 we collected or identified and collected shoe track evidence.

22 Q And where was that? If you face the store, Ken, where
23 would that have been?

24 A If you're facing the store it'd be on the right hand
25 side or on the S. Pinetree Boulevard side in the side parking

1 lot.

2 Q And what is the area like back there?

3 A It's semi-lit. You have light coming from the front
4 parking lot area where the exterior lights are. Going back
5 towards the back side it grows progressively darker. And I think
6 there was a street light a little further down the road that
7 gives you some lighting. It was partially in grass; it was
8 partially in gravel and partially in sand. Where the cars or
9 vehicles park it had eventually killed the grass and it's a,
10 basically rocky-sandy type surface that we were working in.

11 Q Was the area able to leave any shoeprints in that
12 particular area you saw?

13 A Yes, sir.

14 Q Did you observe any?

15 A Yes, sir; we did.

16 Q Did you observe anything else?

17 A Yes, sir. We also found some other items there. We
18 found two full twelve ounce cans of Budweiser beer and a portion
19 of a cardboard or pasteboard top from a Budweiser carton.

20 Q Let me show you first State's Exhibit Number 103,
21 please, sir. Is that what you've just described, the area, part
22 of the area?

23 A Yes, sir; it is.

24 Q And 95?

25 A Yes, sir; it is.

1 Q Is that showing the area where you're talking about you
2 saw the --

3 A Yes, sir.

4 Q -- the beer cans and such? Let me show you these
5 photographs, 96 and 97. Can you identify those for me, please,
6 sir?

7 A Photographs 96 and 97 are photographs of a mud puddle
8 area just on the right side toward the back of the store. And it
9 just, these two photographs display two of the twelve ounce
10 Budweiser beers that were found in the mud. These photographs
11 are photographs of the same two cans of beer, just taken from
12 different angles.

13 Q Let me show you State's Exhibit Number 2 and 3, and ask
14 if you can identify them for me, please, sir? First, if you'd
15 start with 2?

16 A State's Exhibit Number 2 is a Budweiser can that I
17 labeled as Budweiser can number one that was lifted from that
18 scene on that date.

19 Q Number 3?

20 A Number 3 is the second twelve ounce Budweiser can that
21 came from that particular location.

22 Q Did you mark them?

23 A Yes, sir; I did.

24 Q Are those the same cans that are depicted in 96 and 97?

25 A Yes, sir; they are.

1 MR. HARDY: Your Honor, we'd offer 2 and 3 into
2 evidence.

3 MR. MEARS: No objection.

4 THE COURT: They're admitted without objection.

5 BY MR. HARDY:

6 Q You referred to a part of a beer carton?

7 A Yes, sir.

8 Q Let me show you these photographs, 94, 92 and 93,
9 please. If you'd look at them?

10 A These are photographs from varying distances showing
11 the, the portion of the Budweiser carton that was recovered in
12 the same general area as the, as the two cans of beer were found.

13 Q Are they fair and accurate representations of what you
14 saw, Ken?

15 A Yes, sir; they are.

16 MR. HARDY: I think they've already been offered and
17 admitted, Your Honor.

18 Q I show you what's been marked as State's Exhibit Number
19 4, and ask if you can identify this for me, please, sir?

20 A Yes, sir. This appears to be the portion of the
21 Budweiser carton that I obtained from the scene.

22 Q Is that what's depicted in these photographs you've
23 identified in 92, 93 and 94?

24 A Yes, sir.

25 Q And did you turn that into Evidence?

1 A Yes, sir; I did.

2 Q Did you process it?

3 A No, sir; I did not.

4 Q Who did that?

5 A It was processed by Sgt. Glenn Hutchinson of the Thomas
6 County Sheriff's Department.

7 MR. HARDY: Offer Number 4 into evidence, Your Honor.

8 MR. MEARS: No objection.

9 THE COURT: It's admitted without objection.

10 MR. MEARS: Your Honor, subject to the next witnesses
11 we may have some objections as to how it was used, but
12 not insofar as this particular witness is concerned.

13 THE COURT: All right.

14 MR. MEARS: I believe this is the, relates to the
15 fingerprint; is that correct?

16 THE COURT: Yes, sir.

17 MR. HARDY: I couldn't hear what he said, Judge.
18 I'm sorry. Is it admitted or not admitted?

19 THE COURT: It's admitted.

20 MR. HARDY: Thank you.

21 MR. MEARS: Reserve the right to object later.

22 BY MR. HARDY:

23 Q Did you see any shoeprints out in this area?

24 A Yes, sir; we did.

25 Q Where was that?

1 A They were in the same parking lot area on the, on that
2 particular side of the building.

3 Q Near where the beer and the flap were?

4 A Yes, sir. There, there was a series of footprints that
5 led from the front area of the store back in that general
6 direction.

7 Q How many shoes did you see? Right foot, left foot,
8 only the right foot, only the left foot, or what?

9 A Right foot, left foot. There were several of the same
10 particular pattern or what appeared to be the same pattern. We
11 eliminated down and photographed a left and right of each one
12 that seemed to have the most available detail in it.

13 Q How many legible type shoes did you see?

14 A There were a number of different legible shoe tracks.
15 These particular shoe tracks were selected because Henry Williams
16 was there with his canine and they identified these as the most
17 probable tracks belonging to whoever had been in the store. And
18 that, uh, they had more experience in tracking and we selected
19 those prints to photograph and cast.

20 Q 98, 99 and 100, can you identify them for me, please,
21 sir?

22 A Yes, sir. These are shoe impressions that were, were
23 at the scene in the, in the sandy soil area that we worked in.

24 Q Did you take the pictures?

25 A Yes, sir; I did.

1 Q Are they fair and accurate representations of what you
2 saw?

3 A Yes, sir; they are.

4 Q Are they right foot, left foot?

5 A Yes, sir; they are.

6 MR. HARDY: Your Honor, I think they've already been
7 admitted into evidence.

8 THE COURT: What numbers are those, Mr. Hardy?

9 MR. HARDY: 90, excuse me, 98, 99 and 100.

10 THE COURT: Yes, sir.

11 BY MR. HARDY:

12 Q Then you said you made a plaster cast after that?

13 A Yes, sir. It's a, it's a casting material. We no
14 longer use plaster. We use a substance known as, they describe
15 as hydrocal, which is a, a substance that has more durability
16 than plaster.

17 Q How do you do it?

18 A Basically, you mix it with a -- it's a powder com --
19 compound and it comes very similar to cement in an eighty pound
20 bag and we, we dip some into a plastic bag. We add water until
21 we get a consistency of somewhere around like pancake batter.
22 Then just prior to pouring it we add a catalyst to, to make it
23 harden quicker. And while it's still in the liquid state we pour
24 it into the shoe, shoe pattern to try to capture the actual
25 pattern. Depending on the surface, if it's a sandy surface that

1 may be destroyed by, by the weight of the particular casting
2 material, sometimes we'll use something like hair spray to help
3 stabilize the shoe impression prior to pouring.

4 Q Have you ever done that before?

5 A Yes, sir; I have.

6 Q Did you take any pictures of it while it was drying?

7 A Yes, sir.

8 Q 87 and 88, can you identify them?

9 A These are the photographs of the, of the shoe
10 impressions with the casting material, after I have poured the
11 casting materials.

12 Q Are they fair and accurate representations of what you
13 were doing?

14 A Yes, sir; it is.

15 MR. HARDY: Your Honor, I would offer them into
16 evidence.

17 THE COURT: Any objections?

18 MR. MEARS: No objection to the photographs.

19 THE COURT: Admitted without objection.

20 BY MR. HARDY:

21 Q Now, the plaster cast, would it be a reverse of the
22 shoeprint? How would that come out? Explain that to us?

23 A When you pour it, when you lift the image you get a, a
24 reversal. The left shoe would look like a right shoe. The right
25 shoe would look like a left shoe. Simply because you're turning

1 the footprint over when you, when you made the cast impressions.

2 Q Let me show you what's been marked as Number 13. I
3 hand you this box, please, sir.

4 A These are the two cast impressions that I made at the
5 scene that night.

6 Q What did you do with them after you made them?

7 A They were released to Det. Weaver of the Thomasville
8 Police Department for evidence.

9 Q For transfer on up?

10 A Yes, sir.

11 MR. HARDY: Your Honor, we'd offer them into evidence.

12 MR. MEARS: Your Honor, could I ask -- could I ask
13 the Court before the Court rules on their admissibility,
14 if I could have a chance to cross examine Agent Collins
15 about the methods used in collecting those?

16 BY MR. HARDY:

17 Q Just tell us the method you used?

18 A Well, basically I used the same methods that I
19 described to you earlier. This comes in a powder form. I put
20 powder in a plastic bag, mixed it in water. Just prior to
21 pouring it I added a hardener to it. I poured it in the track.
22 Created an impression. The hardener makes it stiffen up and, and
23 solidify much, much faster than normal.

24 Q Did you make a chart showing the relative positions of
25 the beer flap and the cans?

1 A Yes, sir; I did.

2 Q I show you this State's Exhibit Number 139, and ask if
3 you can identify that for me, please, sir?

4 A This is a rough drawing I did demonstrating the
5 locations of the evidence I collected in relationship with the
6 Junior Food Store, W. Jackson Street, and S. Pinetree Boulevard.

7 Q Is it drawn to scale?

8 A No, sir; it is not.

9 Q But did you get the distances from various, of
10 identifiable points?

11 A Yes, sir; I did.

12 MR. HARDY: Your Honor, we'd offer it into evidence.

13 Q Is it a fair and accurate representation of what you
14 saw?

15 A Yes, sir; it is.

16 MR. MEARS: No objection.

17 THE COURT: It's admitted without objection.

18 MR. HARDY: Your Honor, we'd like to pass these
19 copies out to the jurors.

20 THE COURT: All right, sir.

21 MR. HARDY: Give the original to the Court.

22 Give Mr. Mears one.

23 (Whereupon Mr. Hardy tenders documents to the jury)

24 BY MR. HARDY:

25 Q Mr. Collins, would you just -- do you have a copy there

1 with you? Let me give you one. Excuse me. Tell the jury what
2 you've drawn on here, please, sir?

3 A Basically, what you see with the sign Junior Food Store
4 written inside the block, is a representation of the building
5 with its orientation to W. Jackson Street. Down at the bottom
6 edge of the page is the orientation of S. Pinetree Boulevard.
7 The small block with two squares inside it in the lower left hand
8 corner of the page is where the gas island was located at that
9 time.

10 Q Mr. Collins, would, if you looked at it in this way,
11 that would orient you looking directly at the front of the store,
12 if you looked at it like that?

13 A That is correct. If you were standing on W. Jackson
14 Street you would be looking at the front of the store.

15 Q So then where are you finding the cans and the beer
16 flap?

17 A The area that I was working in, if you're looking at
18 the front of the store, would be to your right to where the
19 arrows are drawn on the end of the page.

20 Q Toward what street would that be?

21 A Towards S. Pinetree Boulevard.

22 Q Okay.

23 A The arrows are indicating where the shoe tracks led
24 from the roadway in towards the building, and then there's
25 another set of arrows leading back to where the buildings went

1 towards, I believe the name of the complex is Providence Plaza.
2 It's located behind the Junior Food Store.

3 Q Now, you indicated where the beer flap, the cans were?

4 A Yes, sir; I do. The beer carton or the portion of the
5 beer carton is item one and the two Budweiser cans are labeled
6 two and three.

7 Q Which does it appear, did you find first? The cans or
8 the beer flap?

9 A They were, they were all seen about the same time.

10 Q I'm talking about from the ground?

11 A The number one appears first, which is the beer carton,
12 which is closer to the store. And then the two cans, two and
13 three, are further away from the store, which are the two beer
14 cans in this, the mud puddle are. Measuring from the corner of
15 the building and to a utility pole, if you look right under where
16 it says Exhibit A there's a small circle drawn there and that was
17 a utility pole that I used for reference. The Budweiser carton,
18 or a portion of it, was approximately fifteen feet and two inches
19 from the pole and fifty-four feet and nine inches from that
20 corner of the store. The beer can that's labeled as number two
21 was approximately twenty-one feet and nine inches from the
22 utility pole and approximately sixty feet and three inches from
23 the, from the corner of the store. And the second beer can was
24 twenty-one feet ten inches from the utility pole and it's sixty-
25 two feet ten inches from that corner of the store.

1 Q So you found the beer flap and then can number one and
2 then can number two?

3 A Yes, sir.

4 MR. HARDY: I'll take them up, please, Your Honor.

5 (Whereupon Mr. Hardy retrieves documents)

6 Q Did that conclude your analysis on the outside, Ken?

7 A Yes, sir; pretty much.

8 Q Then where did you go?

9 A Went inside the building.

10 Q And where did you go first inside the building?

11 A When I went in the building I went to the area behind
12 the station where the clerk, store clerk would be stationed.

13 Q Yes, sir.

14 A And I observed the victim where he was found and the
15 evidence around him.

16 Q Was he, excuse me, still there?

17 A Yes, sir; he was.

18 Q State's Exhibit Number 51 and 53, can you identify
19 those for me?

20 A Yes, sir. These are photographs of the victim as he
21 was found, or as he was when I arrived at the crime scene on
22 that, on that particular morning.

23 Q Who went behind the counter with you?

24 A Inv., Det. Weaver was behind the counter with me.

25 Q You and he were working together on the scene?

1 A Yes, sir.

2 Q What's the first thing you do once you see the scene?

3 What's the next thing you did?

4 A I photographed it.

5 Q Did you look around?

6 A Yes, sir; I looked around and photographed it.

7 Q What did you observe on the counter area?

8 A On the counter directly in front of a, or right close
9 in front of the chair, a wooden chair that was sitting behind the
10 counter was some, some paperwork as if somebody had been writing
11 on this particular type of reports or forms that were there. And
12 also on the counter was a lottery ticket that apparently had been
13 cashed in. There were some sales receipts. There was a small
14 spatter, what -- a reddish type substance that appeared to be
15 blood on the edge of the counter. Some small fragments of glass
16 that appeared to have come from a pair of glasses. Looking down
17 under the counter there were the normal items that you would find
18 behind a, a checkout counter at the store. A small safe, bank
19 bags, paper towels.

20 Q Let me show you these photographs if you would and look
21 at them, please. 73, 74, 65, 75, 86, 105, 58 and 59. If you
22 could take time to look at those, please, sir.

23 A (Witness complies)

24 Q Have you had a chance to look at those?

25 A Yes, sir.

1 Q Can you identify them?

2 A Yes, sir. These are photographs I took in the area
3 behind the checkout counter, in the same area in which the victim
4 was found, and they are photographs of the various items that
5 we've discussed, including some possible blood spatters.

6 Q For the record, if we could, please, 73 shows?

7 A Some broken glass that appears to be a portion of a,
8 what appears to be a portion of a eyeglass lens.

9 Q 75, 65 and 74?

10 A These are of the, of the blood spatter, blood stain
11 that I observed on the edge of the counter in front of the chair.

12 Q 86?

13 A This is a photograph of the cash register with a
14 receipt that's still within the cash register that was rang up,
15 rang up at a specified time. It is dated 4-10-94.

16 Q 105?

17 A This is just an overall view looking from the end of
18 the counter towards the checkout area where the, where the clerk
19 was.

20 Q 58 and 59?

21 A These two particular photographs are a closeup of the
22 victim's, I believe it's the left arm, with, with some reddish-
23 brown material that appears to be a blood stain, blood spatter.

24 MR. HARDY: Your Honor, we'd offer each of these

25 photographs into evidence, please. 73, 75, 65, 74, 86,

1 105, 58, 59.

2 MR. MEARS: Just one moment.

3 We don't have any objection, Your Honor.

4 THE COURT: Admitted without objection.

5 BY MR. HARDY:

6 Q Did you -- Was your first priority to check the man
7 behind the counter?

8 A That had already been down and I believe the EMT's had
9 already been to the scene to, to check that and there was not a
10 necessity for me to check him personally.

11 Q I mean, but to check the body?

12 A Do I check the body? Yes, sir; I do check the body,
13 and I did check the body.

14 Q All right. What did you observe about him injury-wise?

15 A He appeared to have two wounds of, I guess, the easiest
16 way to describe it, is puncture looking wounds. One on the face
17 and one on the side of his head.

18 Q Did you determine who he was?

19 A Yes, sir; we did.

20 Q Who was he?

21 A The man's name was Richard Slyszy. I believe that's
22 correct, the way you pronounce that name.

23 Q Identification was on his person?

24 A Yes, sir; it was.

25 Q Matched up with his driver's license?

1 A Yes, sir; it did.

2 Q Now, was he armed?

3 A Yes, sir; he was.

4 Q How was he armed?

5 A The first thing that I observed on him was on the, on
6 his belt. On the right hand side he had a small two shot
7 derringer, .38 type derringer in a small holster. This was worn
8 on the right side and it was with the, with the grip of the
9 handle facing forward or what is referred to most of the time as
10 a cross draw type holster.

11 Q Was that still on his side?

12 A Yes, sir; it was.

13 Q Still there?

14 A Still there. The second thing I found, in one of his
15 right front pockets was a second two barrel, double barrel
16 derringer type weapon. It was just inside the pocket.

17 Q Did you even know it was there by vision?

18 A Not by vision; no, sir. I had to -- I was looking in
19 his pockets for identification factors and other items when we
20 determined what was on his person at the time we found the second
21 weapon.

22 Q Did you take those off of him?

23 A Yes, sir; we did.

24 Q Turned them over to Evidence?

25 A Yes, sir; I did.

1 Q Were they both loaded?

2 A Yes, sir; they were.

3 Q Either one been fired?

4 A No, sir.

5 MR. HARDY: The Number 6, 5 and 6, Your Honor.

6 Q If you'd look at them? Can you identify those items
7 for me, please?

8 A Yes, sir. This was the, one of the derringer pistols
9 that was taken from Mr. Slysz.

10 Q Which number are you looking at?

11 A This is Item Number 5. This is the second derringer
12 pistol that was taken from Mr. Slysz.

13 Q The silver colored one was on his side or in his
14 pocket?

15 A I believe the silver one was on his side.

16 MR. HARDY: Your Honor, we'd offer, they're
17 denominated on the bags they're in as 6-A and 5-A, Your
18 Honor, and on the outside bag it's got 5 and 6 on it.

19 MR. MEARS: Your Honor, the only objection we'd
20 have would be as to the relevancy.

21 THE COURT: They're admitted without objection, or
22 over the objection as to relevancy.

23 BY MR. HARDY:

24 Q Did you seize any of the glass fragments that were in
25 those pictures?

1 A Yes, sir; we did.

2 Q They were on the counter or on the floor?

3 A They was on the counter.

4 Q 10 and 11 here, please, could you look at them?

5 A Item Number 11 are the glass fragments from the
6 counter, which was on top of the counter. The evidence seal, or
7 the seal on the evidence is still intact. And Item Number 10 is
8 glass that was from the floor, next to the victim on the floor
9 and the pool of blood.

10 Q The glass that was on the counter was in one of the
11 photographs you've already examined and --

12 A Yes, sir.

13 Q -- identified earlier today?

14 MR. HARDY: Your Honor, we'd offer both of these
15 into evidence.

16 MR. MEARS: No objection.

17 THE COURT: Admitted without objection.

18 MR. HARDY: They'll be 10 and 11, Your Honor.

19 Q Mr. Collins, did you find any shell casings?

20 A Yes, sir. There were two expended shell casings or
21 cartridge casings down behind the counter behind the area where
22 the wooden chair was sitting.

23 Q Did you seize them?

24 A Yes, sir; we did.

25 Q Did you turn them over to Evidence?

1 A Yes, sir; we did.

2 Q Ms. Everett?

3 A I turned them over to Det. Weaver and he returned, he
4 turned them over to the evidence clerk.

5 Q Do you seal them when you received them?

6 A Yes, sir.

7 Q 159 and 160, if you could identify them for me, please,
8 sir?

9 A These are evidence casings that were seized at the
10 scene. They're .25 caliber cartridge casings. They have been
11 resealed at the crime lab after, apparently after examination.
12 There is no identifying markers on the actual bullet itself
13 because we -- in comparison purposes, I did not want to mark
14 anything that might obstruct the analyst from determining if the
15 bullets had any evidentiary value.

16 Q Are they what's appearing in these photographs of 63,
17 62, 61 and 64?

18 A Yes, sir.

19 MR. HARDY: Your Honor, we'd offer the casings, Your
20 Honor, 160 and 159, into evidence.

21 MR. MEARS: No objection.

22 THE COURT: Admitted without objection.

23 BY MR. HARDY:

24 Q Did the man have anything in his hands when you found
25 him?

1 A Yes, sir. He had a wooden lead pencil in his, I
2 believe it was his left hand.

3 Q Is that what's in Number 60 here?

4 A Yes, sir.

5 Q Did you make a diagram showing where the casings were,
6 Mr. Collins?

7 A Yes, sir; I did.

8 Q How'd you do that?

9 A I basically drew a diagram of the inside portion of the
10 store focusing on the cash register counter or checkout counter
11 area, in that region of the counter, or the space behind the
12 checkout counter where the clerk would have been stationed.

13 Q Number 138 here, can you identify this?

14 A Yes, sir. This is a, this is the drawing that I made
15 of that cash register area on the inside of the store and items
16 one and two that are marked are the .25 caliber shell casings
17 that were recovered from the store.

18 Q Is it to scale or --

19 A It's not to scale.

20 MR. HARDY: Your Honor, we'd offer 138, I believe it
21 is, into evidence.

22 MR. MEARS: No objection.

23 THE COURT: It's admitted without objection.

24 MR. HARDY: Pass them to the jury as a reference, Your
25 Honor.

1 THE COURT: All right, sir.

2 (Whereupon Mr. Hardy tenders documents to the jury)

3 BY MR. HARDY:

4 Q Mr. Collins, again, as we look at it like that, we'd be
5 looking at -- the store would be, facing the front of the store?

6 A That is correct.

7 Q And then you turn it around ninety degrees, you'd be
8 looking from the inside of the store?

9 A Yes, sir.

10 Q Okay. Could you just tell us, the back part is not
11 drawn to scale, where the victim is, the chair, et cetera; is it?

12 A No, sir.

13 Q You're just trying to show where the shell casings were
14 in reference to the counter?

15 A Fundamental relationships; yes, sir.

16 Q Show -- Tell us what you, where you found the casings,
17 please?

18 A Shell casing number one was approximately five foot six
19 inches from the corner of the uppermost left portion of the
20 photograph, or the drawing and the edge of the cash register, the
21 corner of the cash register is five foot six inches. Shell
22 number two was approximately five feet ten inches from the corner
23 and seven foot three inches from the corner of the cash register.
24 And those were used for reference points.

25 Q I think there's at least one photograph, 105 here, does

1 it show the back part of the counter?

2 A Yes, sir.

3 Q Kind of more visually show what your chart shows?

4 A Yes, sir.

5 Q And where was -- In relation to the body now, where
6 were the shell casings?

7 A The shell casings were between the wall on the right
8 hand side of the back wall of the store and the back of the
9 victim, somewhere in the area of these shelves that are on the
10 right hand side.

11 Q Could you just take my pen and just draw on there and
12 show me?

13 A Somewhere in these areas right in here (indicating).

14 Q Did you have a, was it a trash can or something back
15 there? What was back there?

16 A There were boxes. There were many articles of various
17 types of material sitting on the floor and on the shelves. And
18 the chair itself, there's a trash can and the, they may be
19 obscured behind some of those photographs.

20 MR. HARDY: Let me take these up, please.

21 (Whereupon Mr. Hardy retrieves documents from jurors)

22 Q Do you know this gun, is it a -- ejects side, top,
23 left, right? Do you know?

24 A No, sir; I do not know.

25 Q You seized the casings now. Did you seize anything

1 else behind the counter?

2 A Yes, sir. I seized a package of Basic Light 100
3 cigarettes. I also took a portion of the victim's shirt and
4 removed it. I actually cut the piece of the shirt out because it
5 had a blood pattern on it that may have been useful at a later
6 date. A roll of paper towels. And I took the yellow wooden
7 pencil that was in his left hand.

8 Q Number 1 here, can you identify that for me, please,
9 sir?

10 A This is a cutout portion of the victim's shirt, of the
11 left sleeve, with a, with an apparent blood pattern that I
12 collected for possible, possible further evaluations of blood
13 stains, if necessary.

14 Q You just did that as a precaution?

15 A Yes, sir.

16 Q Number 8 here? Is that the pencil you have been
17 talking about?

18 A Yes, sir.

19 Q Ken, you seized, collected the shoeprint, turned it
20 over to the crime lab, Jim Howard?

21 A No, sir. After I seized it, I turned it all over to
22 Det. Chuck Weaver and through his chain of evidence it ended up
23 in the crime lab.

24 Q I realize that, but you did it for further
25 investigation for the lab?

1 A Yes, sir.

2 Q As well as the shell casings?

3 A Yes, sir.

4 Q And you took the photographs that we've seen so far?

5 A Yes, sir.

6 Q And did you take a number of other photographs inside
7 the store?

8 A Yes, sir.

9 Q Did the store to be, appear to be ransacked or messed
10 up or in disarray?

11 A No, sir. The store was uniquely neat.

12 Q I think you took a number of pictures of, down the
13 various aisles and the counter?

14 A Yes, sir; I did.

15 Q Did you go back to the beer cooler area?

16 A Yes, sir; I did.

17 Q I'm going to hand you a number of pictures that show
18 the store, that Mr. Mears has seen them. If we could just look
19 at them. Let me call the numbers out for the record, please.
20 127, 120, 119, 130, 129, 128, 126, 125, 122, 123, 124, 113, 110,
21 112, 108, 115, 114, 109, 111, 116, 117, 131, 132, 135, 134, 133,
22 118 and 121. Ask if you could look at all of those, please, sir?

23 A (Witness complies)

24 Q Have you had a chance to look at all of them?

25 A Yes, sir; I have.

1 Q Do you know what they are?

2 A These are basically overall photographs showing the
3 inside of the store and the relationship of materials within the
4 store.

5 Q Are they fair and accurate representations of the store
6 that morning?

7 A Yes, sir; they are.

8 MR. HARDY: Your Honor, we'd like to offer each of
9 them into evidence.

10 THE COURT: Any objection?

11 MR. MEARS: Those are the ones that were previously
12 called out by number?

13 MR. HARDY: Yes, sir.

14 MR. MEARS: No objection.

15 THE COURT: Admitted without objection.

16 BY MR. HARDY:

17 Q Now, let's look at these photographs again. 127, 120,
18 119, 121 and 118. What area of the store are they?

19 A This is in the cooler area of the store, on the far
20 wall as you walk through the door, to the right hand side.

21 Q What kind of beer is on the bottom shelf?

22 A The bottom shelf contains Budweiser beer.

23 Q What size cartons?

24 A Pardon me?

25 Q What sizes are they?

1 A They appear to be, on the bottom shelf it appears to be
2 cartons of twelve packs which would usually contain twelve beers
3 within each of those cartons.

4 Q Does it appear that any of them are missing in the
5 picture?

6 A Yes, sir.

7 Q Does it appear how many are missing?

8 A There appears to be two missing from, from these
9 photographs.

10 MR. HARDY: Publish them to the jury, Your Honor?

11 THE COURT: Yes, sir.

12 (Whereupon Mr. Hardy tenders documents to the jury)

13 BY MR. HARDY:

14 Q Was the weather clear that day?

15 A Yes, sir.

16 Q It wasn't raining out there like it is right now; was
17 it?

18 A No, sir.

19 Q Had it rained earlier, I guess? The day before or a
20 couple of days before?

21 A Within, within the recent past; yes, sir.

22 Q But that night and that morning it wasn't raining?

23 A No, sir; it was not at the time I was there.

24 Q Did you lift any fingerprints, Ken?

25 A Yes, sir; I did.

1 Q How did you do that?

2 A I developed fingerprints inside the store. I utilized
3 two methods. Number one, I used a fluorescent powder known as
4 Redwak (ph.) powder and the alternate light source or forensic
5 light, a known term that you like to use. And I also developed
6 some using black powder.

7 Q You don't get into whether they're identifiable; you
8 just try to lift them?

9 A That's correct.

10 Q Did -- What areas did you try to get fingerprints?

11 A I primarily worked the area around the checkout
12 counter, where the cash register was, the counter itself, those
13 items that were right around the center of activity, around the
14 body, the entry door on the inside and outside of the building.
15 And also I tried the, the area of the handles where the, the
16 cooler, where the Budweiser beer was missing. I, I put black
17 powder on those areas attempting to lift prints from that area.

18 Q Do you always get prints?

19 A No, sir; you don't.

20 Q More than not you don't?

21 A More likely not than, than so.

22 Q Just because you get them doesn't mean they're of
23 any--

24 A Not necessarily. It doesn't mean that they're either
25 identifiable and it does not necessarily mean that if you can

1 develop them that they are particularly, that they apply
2 particularly to this situation.

3 Q You just try?

4 A Yes, sir. We just attempt to lift all that we find
5 that appear to be usable.

6 Q 165, can you identify that?

7 A These are latent lift cards where the developed
8 fingerprints were lifted and placed on these cards for further
9 evaluation.

10 Q You left that for someone else to do?

11 A Yes, sir.

12 Q And that would have been whom?

13 A Sgt. Glenn Hutchinson with the Thomasville Sheriff's
14 office compared the prints in this case.

15 Q The beer flap, did you lift the print from the beer
16 flap, or did he do that?

17 A He did that also.

18 Q You didn't even lift that one?

19 A No, sir.

20 MR. HARDY: Offer 165 into evidence.

21 MR. MEARS: No objection.

22 THE COURT: It's admitted without objection.

23 BY MR. HARDY:

24 Q Now, one side is the print and the other side is
25 showing where it came from or what is it?

1 A Basically, they're a short brief note indicating where
2 it came from and then my signature on the back.

3 MR. HARDY: I'm going to ask the Clerk if he, may has
4 an envelope that we can maybe put these in later so they
5 won't -- clip it somehow or another.

6 Q So you then gave all that to Hutchinson?

7 A No, sir. I gave it to Chuck Weaver, Det. Weaver.

8 Q For Hutchinson to then analyze?

9 A That's correct.

10 Q And you just find them; you don't analyze them?

11 A That is correct.

12 Q And he would have done the beer flap, done the lift off
13 of it?

14 A That is correct, sir.

15 Q Number 9, I think you've already testified about it. I
16 think, this being the cigarette pack.

17 A Yes, sir; this is the cigarette pack.

18 Q That's what you've already testified to earlier?

19 A Yes, sir.

20 MR. HARDY: Offer it into evidence, Your Honor.

21 MR. MEARS: No objection.

22 THE COURT: It's admitted without objection.

23 BY MR. HARDY:

24 Q So, does that complete your examination of the crime
25 scene inside and outside, Mr. Collins?

1 A Pretty much; yes, sir.

2 Q Did you draw just a basic chart of the inside of the
3 store?

4 A Yes, sir. I drew an overall, just features showing the
5 general layout.

6 Q Not to scale but just a drawing?

7 A Just as a -- There's nothing that I draw as to scale.
8 It's just an overall view of the store.

9 Q Is that 164? Can you identify it?

10 A Yes, sir. This is a, just a general overall sketch of
11 the store, giving a general idea of where items are located
12 within the store.

13 Q Is it a fair and accurate representation?

14 A Yes, sir.

15 MR. HARDY: We'll offer 164 into evidence. Excuse
16 me. 176, Your Honor, into evidence. 176.

17 MR. MEARS: No objection.

18 THE COURT: It's admitted without objection.

19 BY MR. HARDY:

20 Q You never went to the other store; did you?

21 A No, sir.

22 Q And you weren't called to go to Bainbridge when they
23 found the car of Mr. Lucas?

24 A No, sir.

25 Q Did you try -- Did Mr. Hutchinson try to take some

1 prints from the beer cans, or did you do that?

2 A Mr. Hutchinson did.

3 Q You turned those two over to him for that purpose?

4 A Yes, sir.

5 Q You collected the beer flap and turned that over
6 through Weaver to Hutchinson likewise?

7 A Yes, sir; that's correct.

8 Q So you were basically the accumulator and then you
9 disseminated it to other people for further testing?

10 A Yes, sir.

11 Q Did all that happen in Thomas County, Georgia, that you
12 just testified about?

13 A Yes, sir; it did.

14 MR. HARDY: He's with the Court.

15 THE COURT: Mr. Mears?

16 MR. MEARS: Your Honor, may I have just one moment
17 to get some things together?

18 THE COURT: Yes, sir.

19 RECROSS EXAMINATION

20 BY MR. MEARS:

21 Q Good afternoon, Mr. Collins.

22 A Good afternoon, sir.

23 Q I'm sorry to keep you waiting.

24 A No problem.

25 Q Mr. Collins, I want to ask you some questions and I'm

1 going to try to follow in this direction. I preface it so you
2 can you see, you know, where I'm going with the questions. I'm
3 going to ask you a series of questions about your observations
4 concerning the outside of the store, some distances, lighting,
5 things of that nature, work to the inside of the store, and then
6 back out of the store to the tracks.

7 A Yes, sir.

8 Q So I'm going to try to follow that so you'll, at least,
9 get some idea of where I'm going or why some question might be
10 asked. Okay?

11 You've identified the outside of the store, and I believe
12 these photographs are in evidence. I'm just going to ask you to
13 look at 102 to make sure that you recognize that.

14 A Yes, sir; I do.

15 Q And what is that? I'm sorry.

16 A That is a view of the front of the store.

17 Q From what direction?

18 A From, from standing at W. Jackson Street looking at it.

19 Q I'm now handing you 106, I believe, 104. Could you
20 look at, could you identify that, please, sir?

21 A This is a, also a view of the front of the store and
22 the gas pump area and this is standing approximately in the, in
23 the corner of the intersection of Pinetree Boulevard and W.
24 Jackson Street.

25 Q And 101?

1 A It's a, almost a direct on, front on view of the store.

2 Q Okay. And 90?

3 A This one is a view of Pinetree Boulevard, Boulevard,
4 looking from the store standing at W. Jackson Street.

5 Q Okay. And 91?

6 A This is a view of the BP Food Store which is directly
7 across the street, across W. Jackson from, on the opposite corner
8 from the Junior Food Store.

9 Q Okay. If I could ask you to just hold those. I'm
10 going to ask you a few questions about those, and if you would
11 use those as reference. And then at some point I may ask, with
12 the Court's permission, to display those to the jurors.

13 A Sure.

14 Q Now, when you did your measurements on the outside of
15 the store, I assume some of them were more detailed than others.
16 Some were, I assume, would be approximations. Some would be
17 actual --

18 A Well, I used a steel tape and they -- but because of
19 the undulations of the ground sometimes they are -- they are
20 still approximate based on the fact that you can't get a direct
21 straight line.

22 Q Now, the first measurement, I'd ask you at least to
23 make an approximate estimate on, based upon your experience and
24 your having been at the scene, could you give an estimate of the
25 distance from the BP station across the street, and I'm asking

1 you to use the front of the window where if an individual were
2 standing inside the BP station looking across W. Jackson, across
3 the parking lot of Junior Foods, to the windows of the Junior
4 Food? Do you have any idea as to the approximate distance?

5 A I didn't measure it, but I would guess it's somewhere
6 in the range of four to five hundred feet.

7 Q Okay. A little bit over three hundred yards, or, I
8 mean, excuse me, a hundred yards?

9 A Yes, sir.

10 Q Okay. If I, if I stated to you it was approximately a
11 hundred and two paces of a five foot, eight inch person pacing,
12 would that fit into your estimation?

13 A That would not be unreasonable, no, sir; I don't think.

14 Q A little over a hundred yards?

15 A Yes, sir.

16 Q From the front of one store to the front of the other
17 store?

18 A Yes, sir. That's, that's a fair estimate.

19 Q Okay. Now, looking at the photographs, the photographs
20 were made during daylight hours obviously.

21 A Yes, sir.

22 Q Can you look at the BP, the station in the, the station
23 depicting the BP station --

24 A Yes, sir.

25 Q A lot of stations in that question. Are -- Do there

1 appear to be obstructions of any type in the windows? Posters,
2 for sale signs, things like that, that you can discern from
3 looking at that and based upon your recollection of the store?

4 A There appear to be some, some poster type material on
5 some of the windows; yes, sir.

6 Q Okay. Now, would you look at the front of the Junior
7 Food Store and see if you see anything that could possibly be
8 categorized as visual obstructions in the window of the Junior
9 Food Store?

10 A Yes, sir. There are posters and signs also in the
11 windows of the Junior Food Store.

12 MR. MEARS: Okay. With the Court's permission
13 could I ask the, Mr. Collins simply to point to those
14 two stores and what you're referring to to them, please.

15 Q Mr. Collins, I believe if you can step down here you
16 could show them?

17 A (Witness steps down from witness stand) I've got the
18 wrong photograph on that one.

19 Q First of all, if you'll just show, show the jurors the
20 BP station and what you're referring to?

21 A This was taken from, standing in front of the Junior
22 Food Store looking across the street at, at the Jack Rabbit BP
23 Food Store.

24 Q Mr. Collins, as you go back by the jurors, could you
25 show them the Junior Food Store and the windows and what could

1 possibly be visual obstructions in the Junior Food Store?

2 A This is a photograph looking almost straight at the
3 Junior Food Store, and you can see that there are price stickers
4 and signs in the actual windows of the store and about halfway up
5 the store there are some type of posters and stickers on the
6 actual entry door. There are some papers or posters on the area
7 where the clerk was standing. I'm not sure if that green area
8 right there is a reflection, but you'll see as I come back, or if
9 there's another stripe across the window. I can't be sure on
10 that, but you can see it. This area is where I'm talking about.
11 I'm not sure whether that's something that you -- is a reflection
12 or if it's something on the window. I don't remember.

13 Q Thank you, Mr. Collins.

14 A (Witness returns to the witness stand)

15 Q Mr. Collins, using those same photographs, just in
16 general, could you once again, with a little bit more detail,
17 tell the jurors where the lights, the outside lights were placed
18 around the Junior Food Store as you saw them when you did your
19 investigation?

20 A The, the gasoline island is lighted. There are also as
21 you can see in this particular photograph, in the corner of it
22 there is a, there is a light that appears to be a regular street
23 lamp type light. And going down Pinetree Boulevard, I don't
24 remember if there is a street light on that particular pole that
25 we used for measuring or not. But it has some sort of lighting,

1 carry over from the front of the store and other street lights in
2 the general area.

3 Q Do the photographs that you've, you've used and you
4 took when you were out there show the side area of the store
5 where the beer cans and the shoeprints that you've testified
6 about are located?

7 A These photographs have a brief glimpse of it but not a
8 real good overall view of it. This photograph is on the side and
9 this, this area here where it is dirt is on that side. This
10 photograph of it shows the same general side, some of the paved
11 parking area plus the, the dirt area. You can't see in this one.
12 You can see a little bit of it again from the frontal view of the
13 store, but it's difficult to tell about that area.

14 Q Now, as you turn the corner of the store and head east
15 on -- let me get my directions so I don't get turned around. If
16 I were coming out the front door of the store and I turned and
17 went around this corner and went down Pinetree, what direction
18 would I be going in? Do you recall?

19 A Well, you'd be, I guess, headed in a -- you could
20 either consider it south or east depending on exactly where you
21 were standing, because this, this is an area where perhaps local
22 knowledge creates a problem for you in your mind, when you start
23 doing directions on this road. W. Jackson Street, they label W.
24 Jackson Street as U. S. 319, which is a north-south highway,
25 which creates some confusion when you get trying to think that

1 way. So the first, your first instinct is to list north going up
2 319. However, true north is somewhere in between. So that would
3 be depending on how you looked at it. Either west -- You're
4 either east or, or south.

5 Q Okay. And when -- On your legend, you put north, it's
6 somewhat opposed to what the street directions are? Is that --

7 A Somewhat opposed and that in itself has created
8 somewhat of a problem with the description, because I was trying
9 to keep it where it would relate to east-west Jackson Street as
10 being north and south, and then, then when you sit down and draw
11 it, it's, it's almost instinct to put north up 319. So I have a
12 north arrow on this particular, particular portion of it, but in
13 some of my verbal descriptions I use north based on W. Jackson
14 Street, which creates a little confusion. But, yes, that's -- if
15 you go by this arrow, then we're talking about going in an
16 easterly direction.

17 Q And, and lawyers are notorious for losing directions.
18 So that, that explains why I was having trouble with it just a
19 few minutes ago.

20 A Well, I apologize for that. It is, it's a very
21 confusing area simply because true north lies somewhere in
22 between and you've got a U. S. Highway that's a north-south
23 highway and then a city street that's labeled east to west. And
24 it can create some confusion in your mind when you're trying to,
25 to word it out.

1 Q I appreciate that. That may help the jurors when they
2 look at the individual drawing, not to get as lost as I did when
3 I first looked at it. And that's not a criticism of your
4 drawing. I just didn't know the directions you were going with
5 that.

6 A It's very difficult and, and it's easily confused.

7 Q Okay. Now, with regard to your drawing, you've made
8 some, within the limitations of a steel ruler, you've made some
9 specific distance measurements; is that correct?

10 A That is correct, sir.

11 Q Okay. Now, using your drawing, looking at, first of
12 all, the beer cans that were found, the two beer cans that have
13 been introduced into evidence here, when were your, when was your
14 attention first called to those beer cans?

15 A I don't remember the exact point in the investigation
16 when it was first, first drawn to me. We were looking at the
17 shoe impressions and they probably told me about the, the beer
18 cans and the, the beer top being there some time during that
19 conversation. I probably even walked over and looked at it to
20 note it in my mind that it needed further processing.

21 Q Okay. Now, there's been testimony, assume that there's
22 been testimony with regard to a tracking dog named Pete --

23 A Yes, sir.

24 Q -- who turned the corner. Have you ever used a
25 tracking dog?

1 A No, sir; I have not.

2 Q Okay. Would it be a fair statement to say that when
3 you arrived on the scene, everyone's attention had been focused
4 in that particular area? Not because of the tracking dog but
5 because of the witness across the street and the witness of Mr.
6 Taylor? You reviewed their statements and -- did you not?

7 A I didn't review their statements. I'm familiar with --

8 Q You're familiar with what reports they gave to the
9 officers arriving on the scene?

10 A That is correct, sir.

11 Q Okay. So, regardless of Pete's abilities, everyone's
12 attention was already headed in that direction anyway; wasn't it?

13 A Yes, sir.

14 Q And it was -- In your presence was there ever any
15 attempt to take Pete anywhere else other than around the side of
16 that store?

17 A Not to my knowledge. I was not there when Pete worked
18 out.

19 Q Be that as it may. I'm going to ask you look at
20 State's Exhibit 97 and State's Exhibit 96. And are those the
21 beer cans and the general location that you found them in?

22 A Yes, sir; they are.

23 Q Had they been moved or touched at that time, to your
24 knowledge?

25 A To the best I can tell they're approximately where they

1 fell. I don't see anything that would indicate to me that they,
2 that they had been moved. There are some indentions in the mud
3 and that may have been where they fell and bounced. I can't
4 tell. I can't determine if they were -- if that's where they
5 fell and made the, made the indention in the mud upon their
6 initial fall, or what.

7 Q Okay. Using your diagram, and you've put the number
8 two as a Budweiser can and number three as Budweiser can; is that
9 correct?

10 A Yes, sir; that's correct.

11 MR. MEARS: Your Honor, may I ask permission from
12 the Court and the State to redistribute those diagrams
13 that they used? It just occurred to me it might make
14 more sense if the jurors could see them. Could we have
15 the State's permission to do that?

16 THE COURT: Yes, sir.

17 MR. MEARS: Your Honor, may I do that or get Mr.
18 Hardy to do it?

19 THE COURT: Yes, sir; you can do it.

20 (Whereupon Mr. Mears tenders documents to the jury)

21 BY MR. MEARS:

22 Q Mr. Collins, if, if you would orient your drawing,
23 which the jurors now have in front of them, to the outside of the
24 store? Orient that to the photograph that you've just identified
25 with the beer cans?

1 A If you're looking with the, with the photograph in the
2 upright position so that you can read Junior Food Store, the cans
3 that are on the ledger are items two and three. You'll note them
4 on the right, lower right hand corner of the drawing.

5 Q Now, if I read your, your numbers correctly, the beer
6 cans if, if a person were moving down Pinetree, and I won't give
7 the direction, just moving away from the store toward Pinetree --

8 A Yes, sir.

9 Q -- would the beer cans be behind the footprint that,
10 that you've identified here as number one, I mean, excuse me, the
11 beer carton?

12 A The number one item, the beer carton, would be closest
13 to the store. Items two and three would be furthest from the
14 store, going in the direction that you're talking about.

15 Q I had it just backwards. The beer carton, the piece of
16 cardboard from the beer carton is before you get to the mud
17 puddle?

18 A That's correct.

19 Q Would that be a fair statement?

20 A Yes, sir.

21 Q And then you find the two beer cans?

22 A That is correct.

23 Q Okay. Now, in relation to those three items, the, the
24 two beer cans and the beer carton, where was the footprint that
25 you lifted located?

1 A Well, the, the shoe tracks gave a general direction
2 coming around the corner of the store, in the bottom left hand
3 corner as you look at the store, as going towards Providence
4 Plaza or by these three articles. There were a series of
5 footprints. The photographs, the ones that I photographed and
6 collected as evidence were the ones -- we chose one left and one
7 right that appeared to give us the, the greatest detail. But
8 they were headed in the same general direction toward this
9 particular --

10 Q Okay. Could you be just a little bit more specific and
11 just clarify it for me? Would you talk about the several
12 footprints and then the one that you actually lifted?

13 A Yes, sir.

14 Q Or two prints. You thought you had a left and a right;
15 is that correct?

16 A Yes, sir.

17 Q That one footprint, left and right, where was that
18 footprint in relationship to number one on the chart?

19 A The shoe tracks that I actually photographed and lifted
20 were back closer to the store, between one and the carton, in the
21 dirt area of that parking area.

22 Q Okay. Now, just to visualize the distance, would you
23 look at your map, and I'm going to start walking away, and assume
24 that that is the footprint that you located.

25 A Yes, sir.

1 Q Okay. Right here at this corner. And when I get as
2 far away from the footprint as the corner of the store, please
3 tell me to stop.

4 A Well, to say --

5 Q Can you do that?

6 A It'd probably be easier just to relate it. It'd been
7 at least as far as the back door of the courtroom, simply because
8 we're going to run out, we're going to run out of space. But
9 it'd been probably that distance or in that general area. It
10 was, it was thirty or forty feet from the actual shoeprint I
11 actually lifted.

12 Q It's hard to tell from the diagram and the photograph
13 where the footprint was. But is it a fair statement to say that
14 it's almost back to where, maybe even beyond where the bailiff is
15 sitting?

16 A It could be to that distance; yes, sir.

17 Q So the footprint that you lifted would have been that
18 far away, and I'm not going to try to guess the distance, but --

19 A I'm, I'm saying it could, it could have been as much as
20 that distance. It's thirty to forty feet probably from where I
21 actually lifted it and photographed it to where the carton was.

22 Q Now, you saw other footprints in the area; is that
23 correct?

24 A Yes, sir.

25 Q And did you see other footprint, footprints that had

1 the same degree of impressionability on the sole? And do you
2 understand my question? I may not have framed it right.

3 A Well, this, this is a, is a store where a lot of people
4 park. Yes, sir; there were other shoe tracks, there were other
5 impressions. Some of them probably as, as notable as the ones
6 that I lifted.

7 Q So, if this is the corner of the store (walks toward
8 back of courtroom), at least it may be even -- but at least this
9 distance?

10 A Yes, sir.

11 Q From the beer carton; is that correct?

12 A That's correct.

13 Q Between that particular distance and the distance where
14 you found the portion of the beer carton, approximately how many
15 footprints did you find?

16 A I don't know. I didn't count them.

17 Q Was there any -- Did anyone in your presence or at your
18 direction make an attempt to photograph those footprints?

19 A Uh, no, sir.

20 Q Were those footprints discernable? And I'm not saying
21 identifiable. Were they discernable as footprints?

22 A Some of them were and some of them were not. Once
23 again, we, as you go past this area you go into a grassy area.
24 When I was observing these shoe tracks it was in a darkened
25 condition and I, I don't remember how far I could observe them,

1 but they went in that general direction.

2 Q Okay. Would it be a fair statement to say that you
3 only attempted to make impressions of one set of shoes?

4 A As far as plaster casting purposes?

5 Q Yes, sir.

6 A Yes, sir; that is correct.

7 Q The decision by a crime scene technician who's trained
8 in preserving and collecting evidence is somewhat subjective, is
9 it not, in the types of evidence that you deem necessary or
10 proper to preserve and collect? Is that correct?

11 A That is correct, sir.

12 Q And you, you base that upon your experience and your
13 training; is that correct?

14 A Yes, sir; that is correct.

15 Q Now, this was early morning hours, early in the day
16 when you were called out to the scene to help process this crime
17 scene; is that correct?

18 A Yes, sir; that is correct.

19 Q And your attention had already been called to a
20 particular area with regard to the beer can, or the beer and the
21 carton; is that correct?

22 A Yes, sir; that is correct.

23 Q By other officers already on the scene?

24 A Yes, sir; that is correct.

25 Q The footprint that you collected, excuse me, the

1 footprint that you poured the hydrocal and made the impression
2 of, who called that to your attention?

3 A Henry Williams that was the dog handler.

4 Q Okay. Now, when you collected -- I'm sorry. When you
5 processed that footprint, you used a standard liquid portion of
6 hydrocal which is a powder that you've added water to; is that
7 correct?

8 A Yes, sir; that is correct.

9 Q Now, you can lay those down to the side where it's
10 more convenient. As Mr. Hardy asked you, and I believe you
11 responded, that's an inverse or reverse image of the track that's
12 on the scene; is that correct?

13 A Yes, sir; that is correct.

14 Q Now, with regard to the decision to collect that
15 particular print, was it, was it based upon the accessibility of
16 the print, the visibility of the print? How did you make a
17 distinction between collecting that print and any of the other
18 prints that were out there?

19 A Of the prints that I observed, this one probably had
20 the most complete print. Some of them were partial prints; had
21 the most detail that I could observe at that time. The same with
22 both prints. I chose the, tried to choose a left and tried to
23 choose a right that gave us the most quantity of detail and
24 probably the most usable track.

25 Q Okay. Your decision to collect, or to, -- I keep using

1 the wrong word -- your decision to pour and make impressions of
2 these particular shoeprints was not based upon any evidentiary
3 basis other than it was the easiest and most accessible print to
4 make an impression from. Is that correct?

5 A No, sir. There were other shoe tracks there that were
6 just as accessible from a standpoint of pouring the track. These
7 were the ones that were identified to me as leading in the
8 direction from which the officer and his dog had tracked a
9 suspect and they identified these as being the most likely
10 shoeprints to be made. Therefore, we selected, of those that we
11 saw, we tried to select the ones that were most likely to be
12 casted.

13 Q So as I understand your, your decision was based upon
14 perhaps Mr. Williams saying, here's a footprint that Pete smelled
15 on, or tracked on?

16 A This was the track the dog took him in. And I don't, I
17 can't describe tracking dogs for you. But this is what he
18 indicated to me that the dog had indicated would be the most
19 likely set of prints to photograph and to cast.

20 Q And it was about that far, and I'm pointing back to the
21 door or back up here, to where the beer cans and the beer carton
22 was found; is that right?

23 A It could have been that great a distance; yes, sir.

24 Q Now, the photograph that you have that shows the
25 location of the beer -- Oh, here's one. I'm sorry. I knew there

1 was another one. I just -- Let me ask you to identify 95?

2 A This is a photograph looking from the mud puddle back
3 towards the store.

4 Q Okay. That's perhaps a more expansive view of the mud
5 puddle with the beer carton; is that correct?

6 A Yes, sir.

7 Q Okay. Now, did you see any footprints around the mud
8 puddle where the beer cartons were located?

9 A No, sir; I did not.

10 Q Would that be unusual?

11 A Not really. My, my first thought would be if I were
12 going that way I'd go around the mud puddle.

13 Q You don't step in the water; you'd step around it?

14 A I'd go around it; yes, sir.

15 Q Okay. Anywhere around that mud puddle in a direction
16 that would have been usual for someone to avoid the mud puddle,
17 was that checked for footprints?

18 A We're in a, in a grassy area and footprints, you get
19 more grass than you do dirt here and they get extremely difficult
20 to see. I didn't see any more. Were they possibly there,
21 possibly I missed them if they were. I didn't see them.

22 Q I'm asking you to look at State's 103?

23 A This is a photograph standing back towards the front of
24 the store looking in the direction towards the mud puddle or
25 towards Providence Plaza.

1 Q Okay. Would it be a fair statement to say that the
2 beer can and the, and the carton, where the carton was found,
3 based upon your drawing and these photographs and the footprint,
4 and I'll, I'll leave this alone now, but it's a pretty good
5 distance away; isn't it?

6 A It's a fair distance; yes, sir.

7 Q Okay. And would it be a fair statement to say that
8 even though there's a grassy area around here, there was not any
9 great effort to try to locate footprints around the beer carton
10 or that particular location?

11 A Well, I certainly looked in the mud puddle area, in the
12 edge of the mud, did not see any. As far as, as looking, getting
13 on my hands and knees and really searching this particular area,
14 no, sir; I did not.

15 Q Okay. Did you have a chance to review Mr. Williams'
16 report or Mr. Mullins' report with regard to Mr. Williams
17 tracking with ole Pete, I mean Pete?

18 A No, sir; I did not.

19 Q Are you aware that the report indicates that --

20 MR. HARDY: Your Honor, can he ask questions for
21 him to comment upon somebody's testimony or report?

22 They've already testified and he's got cross examination
23 of Mr. Williams and Mr. Mullins, I believe.

24 THE COURT: Mr. Mears?

25 MR. MEARS: Your Honor, I think it would be

1 appropriate if there was an area that was not pointed out
2 to the crime scene technician at the time he was attempting
3 to do his work. I think it would be appropriate for me to
4 ask questions, not about the contents of the report, but
5 whether or not he was told about that particular report.

6 THE COURT: Well, you can ask this witness if he was
7 told a particular fact by someone.

8 MR. MEARS: I'm sorry. That, that's what the limit of
9 my question was going to be.

10 Q Were you told that Off. Williams --

11 THE COURT: So far, insofar as it's not hearsay.

12 BY MR. MEARS:

13 Q And I'm not asking you what he told you, if he told you
14 anything or anything else. Were you, were you directed -- Let me
15 do it that way. Were you directed to the Providence Apartments
16 and directed to any footprints at that location?

17 A No, sir. I was -- It was indicated to me that the
18 tracking had gone as far as Providence Plaza. I did not go to
19 the Providence Plaza area.

20 Q Now, I'm going to ask just a few questions, very few,
21 about the process you used in, in pouring the hydrocal and that
22 sort of thing. Did you use a mold to outline the shoeprint that
23 you were going to make an impression of?

24 A No, sir; I did not.

25 Q And the reason for that would be that because of the

1 type of soil you weren't --

2 A The slope --

3 Q -- the elevation and slope, you weren't worried about
4 the hydrocal running on you; is that correct?

5 A That is correct.

6 Q Now, did you make sufficient pouring the first time
7 that you poured the hydrocal to complete the, the lifting of the
8 print?

9 A Let me, let me again tell you, say that when I pour a
10 hydrocal plaster or any other substance in the process of
11 developing or trying to collect a shoe impression, it is my
12 general principle and general policy to mix sufficient quantity
13 to, to complete each track with one pouring. That is a general
14 rule of thumb. As specifically how much did I pour that night, I
15 don't, I don't have any recollection of that other than the fact
16 that it is my normal procedure.

17 Q Okay. And you have no present recollection of having
18 done a second pouring or an additional pouring with regard to
19 these particular prints?

20 A There were two individual tracks.

21 Q I'm talking about a second pouring on each individual
22 print?

23 A I do not have a recollection of doing that. And, and,
24 like I say, my general practice is to mix enough to pour one
25 complete track at a time.

1 Q Okay. You pour the hydrocal, and my hand I'm
2 indicating the top of the impression; is that correct?

3 A Yes, sir.

4 Q And this is what is on the surface and it dries here
5 and then when it's sufficiently dry, then you lift the print up;
6 is that correct?

7 A Yes, sir; that is correct.

8 Q Now, with regard to the pouring and the lifting, there
9 appears to be a line or delineation of some type on the outer
10 edge. Is that just a natural curvature or was that done as a
11 part of the drying process, or was that done as a part of the
12 lifting process?

13 A These are -- In fact, around the edges of the, of the
14 pattern, and particularly the shoe track, they are possibly
15 pouring patterns. And, and those, the thickness of it, I can
16 probably explain to you what I did.

17 Q Okay. It just caught my attention, and would you,
18 please, just try to help me out with that?

19 A Fundamentally hydrocal is a, is a, is a cement. I
20 don't know what its commercial use is but it's basically a
21 cement. And as we pour this particular substance, or just prior
22 to pouring it, I add a catalyst to it to create, it, it makes it
23 harden quicker. And noting the thickness of it, it looks like I
24 come up a little short on the mixture. I didn't have quite as
25 much as I wanted. And when I poured it in there, because I used

1 the same quantity of catalyst I normally use, it started
2 hardening rapidly. And as it hit the ground it did not flow as I
3 would have desired to have it flow, and while it was still damp I
4 basically reached down here, and you can still see the finger
5 marks as I took it and I spread it out so that it will completely
6 cover the shoe track.

7 Q Okay. That's fine. Thank you. On the diagram that
8 you've drawn --

9 A Yes, sir.

10 Q -- you indicate through drawings what appear to be
11 footprints moving away from the corner of the store toward --

12 A Providence Plaza.

13 Q -- Providence Plaza. You also seem to indicate that
14 there are shoe tracks coming in.

15 A Yes, sir.

16 Q Now, could you tell me what would those notations, in
17 relation to and were there ever any attempt to identify or make
18 hydrocal casts of those shoeprints?

19 A These shoe tracks indicated that somebody or some
20 person walked in a general direction from S. Pinetree Boulevard
21 across this portion of the parking lot back towards the front
22 door of the, or towards the front of the store. The shoe tracks,
23 if I remember correctly, had some characteristics similar to some
24 of the shoe tracks that we were looking at in the parking lot.
25 They were not of sufficient character to, to cast or to make an

1 impression of, simply because this is the area where all the cars
2 parked and the soil was much looser. It's a dry, sandy soil and
3 it did not retain the characteristics that were, were of any
4 benefit, in my opinion, to pour.

5 Q Okay. I'm trying to make sure I've asked all the
6 questions about the outside of the store. If you'll just give me
7 one moment, please.

8 Did you notice any area around the store that might appear
9 to be an air conditioning compressor unit or storage shed or
10 something of that nature on the outside toward the rear of the
11 store?

12 A I don't remember it right off hand; no, sir.

13 Q Do you recall anyone drawing your attention to that
14 particular area to look for footprints or fingerprints?

15 A No, sir; I don't recall right off hand.

16 Q Did anyone involved in the investigation tell you that
17 one of the -- Well, were you ever asked to go back out to do
18 fingerprints after that particular morning you were there?

19 A Not to my recollection; no, sir.

20 Q So, your, your attention was never called to a housing
21 unit for the, an air conditioning unit or air conditioning
22 compressor; is that correct?

23 A Not to my recollection; no, sir.

24 Q Okay. Now, going into the store itself.

25 A Yes, sir.

1 Q I assume you made a visual observation before you
2 started taking any measurements or drawing any diagrams of that,
3 that sort; is that correct?

4 A Yes, sir.

5 Q And you -- Did you use a circular pattern or back and
6 forth? How, just how did you make your observation --

7 A Fundamentally, when I went through the front door, I
8 went to the area where the victim was. I did an overall
9 evaluation in my mind of what I needed to do and what I felt like
10 I needed to do. And then the first sequence then, of course, is
11 to make notes and photograph. In the process of photographing I
12 generally go to all four corners and photograph back in each
13 direction of the store, getting overall shots of the interior
14 portion of the store.

15 Q And that would be a standard crime scene technique as
16 far as capturing the crime scene on film; is that correct?

17 A At some point in time during the process I would take
18 overalls of the store; yes, sir.

19 Q Now, Mr. Collins, I want to ask you some questions
20 about that overall view of the store. And I assume from the
21 looks of photographs 133, 134, 135, 132, 131, 117 and 116, those
22 are photographs that depict the entire scene of the store from
23 various directions; is that correct?

24 A Yes, sir; that is correct.

25 Q Okay. Now, first of all, I call your attention to the

1 windows, those portions of the front windows of the store that
2 can be seen from the, from the photographs. Do there appear to
3 be visual obstructions of any type on the windows inside the
4 store?

5 A Yes, sir; there are some obstructions with some areas
6 being visible, having visibility out of them.

7 Q Okay. And do you have a specific photograph that you
8 feel best shows those, that particular part of the store?

9 A Well, I have a couple. These, this photograph of the
10 front of the store is the windows that are furthest away from the
11 clerk's area. And they have large posters high up in the window.
12 This particular one shows the front entryway door. It doesn't
13 show the door directly adjacent to the, to the location of the
14 cash register, but it's showing some obstruction approximately
15 waist high or a little better on the, on the door area. This one
16 is probably the best overall photograph showing the windows by
17 the, by the clerk's area. And although there is some
18 obstruction, it's hard to tell exactly how much of the window is
19 obstructed from, from that particular photograph.

20 MR. MEARS: Okay. Your Honor, may I publish these
21 briefly to the jury? I'm referring to State's Exhibits
22 116 and 131 and 132.

23 THE COURT: Yes, sir.

24 BY MR. MEARS:

25 Q Would you help me with this, Mr. Collins?

1 A Sure (witness steps down from the witness stand).

2 Q Again, we're just going to walk down the jury, and if
3 you would look at these as we walk down, please (Displays
4 exhibits to the Jury and then the witness returns to the witness
5 stand).

6 Mr. Collins, did you do any measurement of height distances
7 in the store, and, or did you, did you make any mental notes, or
8 did you obtain any mental impressions as to the height
9 measurements within the store? As, referring primarily to the
10 counter top and the merchandise aisles as shown in these
11 photographs?

12 A No, sir; I did not.

13 Q Looking at the photograph here, particularly photograph
14 116 and 131, could you make a reasoned estimate of approximately
15 the height of the aisles, of the merchandise aisles?

16 A A reasonable guess would be four, four and a half feet
17 tall. It should be pretty much standard for the shelving.
18 Usually, these shelves are not much more than chest high.

19 Q Okay. Now, with relationship to the BP station that's
20 across the street, what's the elevation of the topography in that
21 area from the BP station?

22 A It's fairly level. I've never really looked at it. I,
23 I could tell you one is slightly higher by a few feet than the
24 other, but it appears to be somewhat -- it's, it's not a real
25 hilly area, but there's not a tremendous amount of it -- well,

1 there may be five or six feet difference in elevation. I'm not
2 sure. I'm not --

3 Q Is there any way to tell from these photographs,
4 particularly photograph 104, as to whether or not the store
5 itself is of a higher elevation than the BP store?

6 A No, sir; I can't tell you by looking at the photograph.
7 I, I really don't know.

8 Q Okay. Based upon your recollection from the BP station
9 coming across W. Jackson up to the Junior Food Store, is there
10 any increase in the elevation, no matter how slight?

11 A I would think, and this is based strictly on, on
12 personal recollection of going through the parking lots of both
13 stores, that the BP station would be slightly higher.

14 Q The -- Looking across -- Your, your testimony is that
15 the BP station would be higher than the Junior Food Store?

16 A If, if I were to guess, yes, sir; I would say yes.
17 And, there again, I don't have any way to verify that or to, to
18 make anything more than a guess at it.

19 Q Okay. Is that based upon your recollection of BP
20 stations or this particular scene?

21 A It's, it's based on the fact that I drive by that
22 particular intersection on a daily basis. And if my memory
23 serves me correct, I remember going up in the driveway at the BP
24 station, and it seems like there's more elevation going up in the
25 driveway than there is at the Junior Food Store.

1 Q Now, the BP station, it sits back off of W. Jackson?

2 A Yes, sir.

3 Q And the Junior Food Store sits up off of W. Jackson and
4 Pinetree; is that correct?

5 A That is correct.

6 Q Okay. Now, if, and only if, you were looking through
7 the store of the BP station, over a hundred yards, into the
8 windows of the Junior Food Store, would you have an opinion as to
9 the absolute height that a person might be visible, if they were
10 visible at all, from that distance considering the visual
11 obstructions in both stores?

12 A I have absolutely no idea. I, I don't -- I wouldn't
13 even venture a guess as to such a situation, because I don't
14 know.

15 Q Did you go across and look out of the BP station toward
16 the, or did anyone to your knowledge do that?

17 A I did not. And to my knowledge, I don't know if anyone
18 else did or not.

19 Q But your recollection is that the shelving heights in
20 the Junior Food Store are somewhere around four, four and a half
21 feet?

22 A I'd estimate in that general area there. They're
23 pretty basic, standard shelving that you find in a store. Most
24 of them are chest high with the products on them.

25 Q Okay. Now, after you had made your visual inspection

1 of the store, did you then decide what areas you were going to
2 attempt to lift latent fingerprints from?

3 A No, sir. The first thing that I did was, was to go to
4 the area of the victim and process the area in which the victim
5 was found so that we could remove the victim from the scene.

6 Q Okay. After that event had taken place, did you then
7 made a determination as to what areas you would attempt to lift
8 latent prints from?

9 A Yes, sir; I did.

10 Q Okay. What criterion did you use to make the
11 determination as to where to dust using whatever form of -- First
12 of all, there are different substances that are used; are there
13 not?

14 A Yes, sir; there are a multitude of different things you
15 can use.

16 Q Is there any one particular type of fingerprint
17 identifying, that would identify the print so that you could make
18 the lift? Is there any one particular type that you feel is
19 better than the other?

20 A I, I don't have any real preference. I think the most
21 common and most frequently used substance for developing prints
22 overall is the standard black powder. And that's pretty much a,
23 a standard within the industry.

24 Q Okay. Do you know -- Are you familiar with the other
25 types of substances or chemicals that are used by other people in

1 lifting prints?

2 A There, there are many chemicals and many other
3 substances used to develop prints; yes, sir. We do use some at
4 different times on different occasions and different
5 circumstances.

6 Q So you used fluorescent powder?

7 A And I also use black powder.

8 Q And you use black powder?

9 A Yes, sir.

10 Q Do you know on any particular print which one you used?
11 Did you make a determination, and I'm referring now to 165, did
12 you make a determination as to which of those particular prints
13 you used one or the other substances?

14 A Well, on any real smooth surface I probably went
15 straight to the black powder. If I had a surface where I might
16 have a contrast problem so that black powder would not be as
17 easily seen, I would have probably gone to the fluorescent
18 powder. However, if I had developed a print with fluorescent
19 powder, I've found over a period of time that you cannot lift
20 fluorescent powder and be analyzed by the, by the identification
21 technician. So what I do, if I do develop a print using a
22 fluorescent powder, I go back over the same print with a black
23 powder, once I have identified it, and lift the black powder
24 portion of it. And then you have a, a usable print.

25 Q Mr. Collins, so the jurors will perhaps have a more

1 clearer understanding of the process that you used, what is, what
2 is it on the surface that becomes discernable once you have
3 dusted it, so to speak, with a particular substance: fluorescent
4 powder, black powder, or whatever?

5 A I'm not --

6 Q Is it oil? Is it the actual impression?

7 A What does it adhere to?

8 Q Yes, sir.

9 A Yes, sir. The powders all adhere to the oils or the,
10 the fl -- the sweat that's exuded through the skin, any
11 contamination that's picked up or exuded through the pores as
12 sweat is left, the basis of it being water or sweat, and it
13 eventually evaporates leaving oils, amino acids and other small
14 particles that are included in your sweat pores.

15 Q Okay. Now, in this particular crime scene, you made a
16 determination, and I think I was headed down this road and I
17 sidetracked myself, you were making -- you were telling us what
18 criterion you used to dust a particular surface or a particular
19 article or a particular area --

20 A Yes.

21 Q -- for possible prints. Would you tell us what
22 criteria you used?

23 A Basically, the criteria I used was as you come through
24 the front door, realizing that someone had come in and out the
25 front door, obviously that becomes an area that you would want to

1 look at. The second thing would be the location of the victim.
2 The probability that this person either approached the checkout
3 counter, may or may not have touched things in it. The fact that
4 the cash register was, I guess the word would be locked or, or
5 the lights were flashing but it was not functioning. There was a
6 chance that somebody had touched the cash register. As I walked
7 through the store and looked at the, the cooler area, the rod
8 that is used after midnight in a lot of these stores to, to
9 prevent somebody from opening the beer cooler doors where they
10 can sell beer after midnight, or so they can't sell beer after
11 midnight, had been moved down away from the beer section, so I
12 obviously wanted to process the area of the doors, the cooler
13 doors that may or may not have been touched by, by the
14 perpetrator.

15 MR. MEARS: Your Honor, may I ask the Court if we
16 could turn the air conditioning down a little bit. I'm
17 quite warm and I apologize. I'm just somewhat
18 uncomfortable with heat.

19 THE COURT: Is anyone else warm or cold at this time?

20 JUROR: Cold.

21 THE COURT: Ma'am?

22 JUROR: I'm cold.

23 MR. MEARS: Never mind, Judge. I feel fine. I'll
24 go forward, Judge. I don't want to inconvenience the
25 jurors.

1 THE COURT: Mr. Mears, can you give me an
2 approximation at this time about, of about how much longer
3 you'll be with this witness?

4 MR. MEARS: I'm about halfway through, Judge.

5 THE COURT: All right, sir. Why don't we take about
6 a ten minute recess at this time.

7 MR. MEARS: Judge, could we -- I'll get these back
8 from the jurors.

9 THE COURT: Yes, sir.

10 (Whereupon the documents are retrieved from jurors)

11 THE COURT: Ladies and gentlemen, you may go to your
12 jury room.

13 We'll be in recess for about ten minutes.

14 (Whereupon the Court takes a brief recess, and upon
15 reconvening the following transpired in the jury's
16 presence)

17 THE COURT: Ladies and gentlemen, let me just remind
18 you that at any time during the trial any of you need to
19 take a break for any reason, let me know and we'll try to
20 accommodate you.

21 In addition, if at any time any of you get too hot or
22 too cold, let us know that and we'll try to accommodate you
23 also.

24 Mr. Mears, you may proceed.

25 BY MR. MEARS:

1 Q Mr. Collins, I'll try to make sure that my questions
2 are more directed and I'll try to be as, a little bit quicker
3 with it. I just want to make sure that I've asked all the
4 questions I need to ask of you with regard to your work in the
5 store. And I apologize for the tedium that I'm sure my questions
6 must be provoking, so --

7 A No problem.

8 Q -- please, please forgive me. When you decided to
9 attempt to lift the fingerprints from those various areas of the
10 store, as you've already indicated, you did, in fact, make
11 attempts to lift latent fingerprints from various areas, inside
12 the front door, around the cash register, places like that; is
13 that correct?

14 A That is correct.

15 Q How many usable prints did you obtain?

16 A I did not evaluate them. I don't know how many of
17 those prints are usable or identifiable.

18 Q Okay. So you don't know how many of the prints that
19 you took were of value as far as identification purposes; is that
20 correct?

21 A No, sir; I do not.

22 MR. MEARS: Your Honor, I've already shown this to
23 Mr. Hardy, and it's been marked as Defendant's Exhibit 17.
24 It is a, an enlargement of Mr. Collins' drawing of the
25 inside of the store.

1 Q Mr. Collins, is it okay if I ask you some questions
2 with regard to this particular, your drawing as it's blown up?

3 A Certainly.

4 Q Does it appear to be a fair and accurate representation
5 of your smaller copy?

6 A Yes, sir; it does.

7 Q Okay. Now, with regard to the points in the store that
8 you attempted to lift latent prints, could I ask you just very
9 quickly to come down and make sort of a general circle in that
10 area where you attempted to lift latent prints? And if I could
11 borrow the court reporter's red pen? And I realize this does not
12 have the other areas, but just so that the jurors could see where
13 you made attempts to lift prints.

14 A (Witness steps down from witness stand and refers to
15 drawing) Certainly, I worked the area of the entry and exit
16 point which is the door in front of the store. I worked the area
17 in and around the cash register where that it, understanding that
18 from the position of the victim that he was in this area at the
19 time the perpetrator entered. I worked this area of the counter.
20 There is some, some items here. This is the general area where
21 you slide your different items that you're going to purchase
22 across, across the counter and in most areas are likely that you
23 would lean up on the counter. This area was processed. I
24 processed the keys and the, the reachable areas of the cash
25 register. I processed in the corner areas along in these areas

1 of the counter under the assumption that it was possible that
2 someone came around and attempted to enter the cash register.
3 Whether they did or not, I don't know. But that's just, just a
4 likely area that, that logically tells me that these areas need
5 to be processed for prints. Also I went from this area to the
6 area, in this area of the store where the coolers would be
7 located. And since this particular rod had been moved, I
8 processed those handles for the door and the outside portion of
9 the glass. The inside portion of the glass in the cooler area
10 was not possible to print it simply because of the, of the
11 condensation that occurs on the inside of these glass windows
12 and, and I don't have anything on glass that would develop it.
13 Powder would just make a mess on, on the wet area. So that area
14 was not processed. Those are essentially the areas that I felt
15 like the person may have been, moved about the store or been in
16 during their periods of time within the store. And those are the
17 areas that I processed for, for the possibility of latent prints.

18 Q Mr. Collins, while you're still down here, I want to
19 ask you to look at State's Exhibit 105, and orient that, if you
20 will, to your drawing with regard to the location of Mr. Slys
21 when you saw him?

22 A This, this stick figure that I have drawn here behind
23 the counter, and let me get to where maybe -- Is that better?
24 Okay. Great. This stick figure that I have drawn represents the
25 figure of Mr. Slys. And obviously, it's a little more curvature

1 in shape with the feet being pointed a little bit more forward
2 this way and with the head being up against the counter in the
3 area of, right up under the, under the counter area. He's in a
4 almost, kind of on his back face up. This chair probably is a
5 little closer to the, to the counter than it indicates in the
6 drawing, but it's the general area it was located in. And this
7 whole area, from here to here, is five, maybe six feet in width.

8 Q You've made a drawing -- you've made a notation here,
9 what appears to be a seven feet, three inches and an arrow there
10 to the back of the chair. What does that indicate?

11 A This, this arrow goes on past the chair and it actually
12 indicates number two, the one and two, which are your .25 caliber
13 shell casings that were recovered from this area of the, of the
14 store.

15 Q Okay. So from the front of the cash register to where
16 the shell casings were located is approximately -- your
17 measurement was seven feet, three inches; is that correct?

18 A That is correct.

19 Q And the other shell casing was five, six inches; is
20 that correct?

21 A That is correct.

22 Q From looking at the photograph and the position of Mr.
23 Slyszy's body as you found it, were you able to make, based upon
24 your experience, a determination as to his location, out where he
25 was standing or seated at the time he was shot?

1 A His most likely location, based on, on the scene and
2 what I saw, is he would most likely have been probably sitting in
3 this chair and the chair may have been somewhat closer to this
4 particular counter.

5 Q What was in the front of this counter? Do you recall?

6 A Uh, seems like there was a money order machine. There
7 was some, some paper boxes, adding machine, the shelf. It's,
8 it's cut off from, from the, from the customer side of the shelf
9 by, by things that are stacked up, as in most any particular
10 store that you walk in.

11 Q Based upon this, did you see an area where it appeared
12 that groceries would be bagged and sacked? Was it to the left of
13 the counter?

14 A No, sir. The, the area that the customer would pass
15 items back across for, for checkout would be on this side of the
16 cash register and it's an area that's, that's comfortable to work
17 in. It's, what, two or three feet?

18 Q About right here?

19 A That's correct.

20 Q Okay. Thank you.

21 A Thank you (witness returns to the witness stand).

22 Q Mr. Collins, when you processed the scene, did you have
23 available to you any information, and I think I know the answer
24 to this question, but did you have any information about any
25 individuals who might have been in the store at the time Mr.

1 Slyszy was, was shot?

2 A As far as identity goes?

3 Q Yes, sir. Identity, size, weight, anything at all?

4 A Nothing other than the fact that they stated that there
5 might have been two black males in the store.

6 Q And that was the extent of, of the knowledge you had
7 about who might have been in the store at the time that Mr. Slyszy
8 was shot?

9 A Yes, sir; that's correct.

10 Q Okay. Other than the items that you have found --
11 you've already testified you found the guns that Mr. Slyszy had on
12 his, the cigarette packages and things of that nature. Were
13 three any other items of evidentiary value that you found or
14 located in, in the store that morning?

15 A I did collect a roll of paper towels that was under the
16 shelf directly in front of the area that he was sitting in. The
17 reason I collected that particular roll of paper towels as, as
18 the -- it appears that as he fell from the chair to the floor,
19 that pencil struck the paper towels and left a pencil mark on it.
20 So that was photographed and collected.

21 Q Excuse me. Mr. Collins, with regard to that, as, as an
22 interpretation of that particular bit of evidence that you
23 collected, did that indicate to you, or would it indicate to you
24 that Mr. Slyszy was shot rather unexpectedly?

25 A Yes, sir; I would think so. It would appear to me,

1 and, and there again I don't -- this is just totally an
2 assumption on my part. It appears that he was doing some type of
3 paperwork and probably was unaware that it was fixing to happen.

4 Q Any other item of evidentiary value?

5 A Nothing that we collected at that time; no, sir.
6 There, there were some other items there but we did not collect
7 them.

8 Q Did anyone, to your knowledge, make an attempt to run
9 the cash register tape to determine what the last item was sold
10 and when it was sold?

11 A It was photographed. It was still in the cash
12 register. If I'm not mistaken, that was collected. That would
13 have probably been collected by Det. Weaver. I did not
14 personally collect it. I don't think there was a time displayed
15 on there. The date was there but I'm not -- I don't think there
16 was a time on it.

17 MR. MEARS: I believe I'm through, but let me make
18 sure. One moment, Your Honor.

19 Q Mr. Collins, one area that I'm still confused about.
20 The fingerprint that was lifted, the latent that was lifted from
21 the portion of the carton, beer carton --

22 A Yes, sir.

23 Q -- did you do that or did Det. Hutchinson do that?

24 A Sgt. Hutchinson developed and lifted that print.

25 Q Okay. You didn't have anything to do with the

1 identifying of it as a print or dusting it or lifting it; is that
2 correct?

3 A No, sir. That's correct.

4 MR. MEARS: Okay. I have nothing further, Mr. Collins.
5 Thank you for your patience.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. HARDY:

8 Q I think we've talked about facing the store on the
9 right hand side. The other store -- other side of the store, was
10 any scent gathered on the other side of the store, to your
11 knowledge?

12 A No, sir; not that I'm aware of.

13 Q The other side of the store, you're familiar with what
14 it looks like?

15 A I probably looked around there. I don't remember any
16 details on that side of the store. I -- There was nothing around
17 there that appeared to, to require that I work in that area.

18 Q 177 and 175?

19 A These are photographs, once again, it's taken from the
20 W. Jackson side of the Junior Food Store. 175 shows a trash
21 dumpster that is located just to the left of the store. And the
22 other photograph is closer and it basically takes a photograph of
23 the left side area of the store.

24 Q Are they both fair and accurate representations?

25 A Yes, sir; they are.

1 MR. HARDY: Offer them into evidence, Your Honor.

2 MR. MEARS: No objection.

3 THE COURT: Admitted without objection.

4 MR. HARDY: That's all I have, Your Honor.

5 THE COURT: Gentlemen, may this witness be excused?

6 MR. HARDY: We can put him on call. I think we've
7 got his beeper number or how to get him at the G. B. I.
8 if we need him.

9 THE COURT: Thank you, sir.

10 AGENT COLLINS: Thank you, sir.

11 MR. HARDY: Jim Howard.

12 THE COURT: Dr. Howard, if you would raise your right
13 hand?

14 Do you solemnly swear or affirm that the evidence
15 you'll give this Court and this jury concerning the matter
16 now pending before the Court shall be the truth, the whole
17 truth and nothing but the truth, so help you God?

18 DR. HOWARD: Yes, sir.

19 THE COURT: Mr. Hardy?

20 DR. JAMES W. HOWARD

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. HARDY:

24 Q What's your name, please, sir?

25 A James W. Howard.

1 Q Where are you employed, please, sir?

2 A I'm employed with the Georgia Bureau of Investigation
3 Crime Lab in Moultrie, Georgia.

4 Q And how long have you been with them, Jim?

5 A I've been with the crime lab system for twenty-three
6 years.

7 Q And what do you do for them?

8 A I am a microanalyst and criminalist.

9 Q Can you tell us a little bit about your background and
10 training, please, sir, your educational experience?

11 A Yes, sir. Uh, I have a Bachelor's Degree in Chemistry
12 from Georgia State College in Atlanta. And a Ph.D. in Inorganic
13 Chemistry from the University of Virginia. And after three years
14 of post graduate research, I taught at Ford International
15 University for a year. And then in September of 1974 started as
16 a crime lab scientist with the Atlanta laboratory where I
17 received my initial training. And in November of 1978 moved to
18 Moultrie and became a scientist in the Moultrie laboratory where
19 I've been since, for a little over nineteen years.

20 Q You're a microanalyst, I think?

21 A Yes, sir.

22 Q And what does that mean?

23 A As a microanalyst, uh, the, the main duties include the
24 receiving and processing of evidence in criminal cases and the
25 use of the microscope being one of my principal tools for

1 analysis.

2 Q Is another one of your fields ballistics?

3 A Yes, sir. I am a firearms examiner, which includes the
4 test firing of weapons and the retrieval of test bullets and
5 cartridge cases and the comparison of these items to evidence
6 bullets and cartridge cases.

7 Q How many years you been doing that, Jim?

8 A For twenty-two of my twenty-three years.

9 Q And you've had many hours of training in that
10 particular field?

11 A Yes, sir. Uh, as -- For a total of two years in
12 Atlanta while there for my little over four years.

13 Q You've been doing it twenty-two years?

14 A Yes, sir.

15 Q Have you ever testified in a court of law and I guess
16 basically all of south Georgia as an expert in this field?

17 A Yes; I have.

18 Q And is another field of yours shoe impressions?

19 A Yes, sir. As a, as a criminalist I've also trained for
20 a short period of time in Atlanta and have done case work in the
21 area for about twenty-one years.

22 Q You've testified as an expert in that field likewise?

23 A Yes; I have.

24 MR. HARDY: Your Honor, we'd submit him in the field
25 of expertise criminalist and ballistics, firearms as well

1 as shoe impressions.

2 THE COURT: Mr. Mears?

3 MR. MEARS: Your Honor, we have no objections to Dr.
4 Howard being qualified as an expert in the area of
5 ballistics. We don't have any objection to him being
6 qualified in any of the other areas other than shoeprint
7 identification. And we would continue in our objection to
8 that, if I could simply have a continuing objection based
9 upon our other objections made in this area.

10 THE COURT: All right, sir. Considering all the
11 matters that I have heard in this area, I'll qualify him
12 as an expert in all fields tendered at this time.

13 MR. MEARS: And I can have a continuing objection
14 with regard to shoeprints?

15 THE COURT: Yes, sir.

16 BY MR. HARDY:

17 Q Dr. Howard, the State of Georgia versus Ray Jefferson
18 Cromartie, were you asked to do some ballistics work, firearms
19 work?

20 A Yes, sir. There were some items tendered to the
21 laboratory for initially comparison purposes and then shortly
22 thereafter a weapon was tendered for comparison identification
23 purposes.

24 Q I show you some items and ask if you can identify them
25 for me, please, sir. First, I'll show you what's been marked as

1 State's Exhibit Number 29, and ask if you can identify that for
2 me, please, sir?

3 A Yes, sir; I can.

4 Q What is it?

5 A State's Exhibit 29 is a, a metal jacketed bullet that
6 was delivered to the laboratory on our case number M94-1810, and
7 involved a case identified as, the victim being Dan Wilson, and
8 the evidence was brought, brought to the lab by Glenn Hutchinson.

9 Q What caliber is that projectile?

10 A That is a .25 caliber metal jacketed bullet.

11 Q You can tell that from looking at it?

12 A Yes, sir. Yes, sir; I can.

13 Q I show you Number 156, and ask if you can identify that
14 for me, please, sir?

15 A Yes, sir. State's Exhibit 156 is identified by our
16 crime lab case number and item number and as with State's Exhibit
17 29 was delivered by Glenn Hutchinson to the lab. And State's
18 Exhibit 156 contains a .25 caliber cartridge casing which is
19 further identified as the part of the bullet that, that, of the
20 total bullet that holds the projectile that is fired through the
21 barrel of the weapon.

22 Q I show you 162, and ask if you can identify this for
23 me, please, sir?

24 DR. HOWARD: Your Honor, the weapon is clear.

25 THE COURT: Thank you, sir.

1 A I do recognize State's Exhibit 162 by the serial number
2 and my initials. It was submitted on the Dan Wilson case and a
3 second case involving a Mr. Slyszyk as the victim. State's Exhibit
4 162 was also delivered by Glenn Hutchinson to the laboratory.

5 BY MR. HARDY:

6 Q What caliber and what type gun, brand name?

7 A State's Exhibit 162 is a Raven Arms, .25 caliber semi-
8 automatic pistol.

9 Q I show you items Number 159 and 160, and ask if you can
10 identify them for me, please, sir?

11 MR. HARDY: I don't think 156 has been offered. We'll
12 offer that at this time.

13 MR. MEARS: No objection.

14 THE COURT: Admitted without objection.

15 A State's Exhibits 159 and 160 are identified by our
16 crime lab case number and item number and each of, 159 and 160,
17 contain one .25 caliber cartridge casing.

18 BY MR. HARDY:

19 Q And they are associated with which case?

20 A These were associated with the Slyszyk case and both of
21 these were delivered to the laboratory by Chuck Weaver, April the
22 11th of 1994.

23 Q 158 and 157, if you could -- they're in this bag. If
24 you could look at them for me, please, sir?

25 A Yes, sir. State's Exhibits 157 and 158 are both

1 identified as .25 caliber metal jacketed bullets. And these were
2 transferred to the Moultrie lab by Dr. Parker after the autopsy.

3 Q They were down in your custody until you brought them
4 down, I think, Monday?

5 A Yes, sir. Yes, sir.

6 Q And those are both .25 full?

7 A These are both .25 full metal jacketed bullets and, and
8 are identified by our crime lab case number and item number.

9 Q Your initials are on those too?

10 A And my initials are on the, on the base of the bullets.

11 Q Now, tell us how you make comparisons of projectiles
12 with guns and shell casings with guns? Can you do that?

13 A Yes. Yes; I can. If I can just, just by holding
14 162 --

15 Q Yes, sir.

16 A -- just for exhibit. The, the testing procedure in a
17 firearms identification case begins with a, of course, an
18 examination of the cartridge cases recovered from a, a scene and,
19 of course, any projectiles or, or bullets that may have been
20 recovered for comparison to ascertain their caliber and
21 microscopic characteristics, if they are suitable for comparison
22 purposes and, and the like. And if a weapon is submitted --

23 Q First, did you examine the casings in this case in that
24 manner?

25 A Yes; I did.

1 Q All right. Go ahead.

2 A The, uh, the initial examination was made to determine,
3 first of all, what caliber they are, and are they suitable for
4 comparison, and then if a weapon is submitted, the weapon is
5 examined, function for operability and then test fired using
6 ammunition like the ammunition or the evidence submitted with the
7 case.

8 Q Is that what you did in this case?

9 A Yes. Yes; I did.

10 Q I show you this little box containing 161, and ask if
11 you can identify this?

12 A Yes, sir.

13 Q What's that?

14 A State's Exhibit 161 are three test firings including a
15 bullet and a casing which were recovered from a water tank that
16 I, I discharged the, the weapon into. Uh, the water enables the
17 examiner to recover the bullets without any extraneous damage to
18 them other than what the barrel of the weapon has placed on the,
19 on the bullets, on the test bullets.

20 Q Is that what you did in this case?

21 A That's what I did in this case.

22 Q Are those the test firings, 161, which were fired from
23 162?

24 A From 162; yes, sir.

25 Q Into the water tank?

1 A Yes, sir. And, of course, these are identified by our
2 case number, the make and serial number of the weapon and my
3 initials.

4 MR. HARDY: Your Honor, we'd offer 161 into evidence,
5 test firings.

6 MR. MEARS: No objection.

7 THE COURT: Admitted without objection.

8 BY MR. HARDY:

9 Q So what's the next thing you do? You examine the shell
10 casings. You make the test firings. What do you do next?

11 A After obtaining the test firings, both the bullet and
12 the casings, these are examined to determine the best of the
13 tests, so to speak, and then those, those tests are compared
14 microscopically on a ballistics comparison microscope, which is
15 equipped with two stages to accept the test bullet or casing on
16 one side and the evidence bullet or casing on the, on the second
17 side. And these are, these are microscopically compared together
18 to determine the, uh, the presence of suitable markings, which
19 are called tool markings, on both the evidence and the test to
20 see if they will match microscopically for a determination of
21 whether or not that bullet or that casing was fired in or from
22 the, uh, the weapon submitted.

23 Q Is that what you --

24 A And if the test rounds match microscopically, of
25 course, the evidence, then we can conclude that the evidence was

1 also fired from that weapon that was submitted.

2 Q Is that what you did in this case?

3 A Yes; I did.

4 Q Is that the procedure you used?

5 A Yes, sir.

6 Q Is that the standard procedure in your lab, the
7 F. B. I. lab, the Alabama lab --

8 A Yes. Yes, sir; it is.

9 Q And you've been doing that for how many years?

10 A For twenty-two years.

11 Q You've done that, I guess, thousands of times?

12 A Over the years in, in terms of, of exhibits and so
13 forth; yes, sir.

14 Q The bullet from Mr. Wilson, the two from Mr. Slys, do
15 you have an opinion as to what fired them?

16 A Yes, sir; I do.

17 Q What is that opinion?

18 A My opinion is that the, uh, the bullets in State's
19 Exhibit 29 and in Exhibits 157 and 158 were fired from Exhibit
20 162.

21 Q As to the casings, 160, 159 and 156, do you have an
22 opinion as to which weapon they were fired from?

23 A Yes; I do.

24 Q And what's that opinion?

25 A Likewise, the, State's Exhibits 156, 159 and 160 were

1 fired in State's Exhibit 162.

2 Q Any doubt in your mind?

3 A No doubt.

4 Q This weapon, how does it extract the, the casings?

5 A As with a, a weapon of this type, it's got an
6 extraction mechanism that, if I could illustrate, when a test
7 round is fired, or a round is fired, the slide is pushed to the
8 back, to the rear of the gun, and as it, as it proceeds to the
9 rear of the gun it extracts the fired casing and ejects it
10 backward and --

11 Q Up in the air?

12 A -- and, and somewhat to the right of -- if the shooter
13 were right handed it would eject it back over his right shoulder.
14 And in, in the process of returning forward it loads in a new
15 round in, in the chamber for the next firing.

16 Q So it throws it out and then it --

17 A And then it reloads a, a new round into the --

18 Q It goes out and it hits or whatever it may do? The
19 shell goes up in the air and it's --

20 A And it comes down. But usually in, in this type
21 extraction it will come out over the right shoulder of a right
22 handed shooter.

23 Q Now, did you do some shoeprint work?

24 A Yes. There was also a set of plaster casts and
25 photographs submitted for comparison to four separate pairs of

1 shoes.

2 Q First let me show you this 13 if I could, please.

3 THE COURT: Gentlemen, I don't think we addressed at
4 the end of, I believe it was Mr. Collins' testimony,
5 whether or not 13 would be admitted. Do you have any
6 objections?

7 MR. MEARS: I don't have any objection at this
8 point, Your Honor, subject to everything else that's
9 been objected to.

10 THE COURT: Yes, sir. 13 is admitted without
11 objection.

12 A State's exhibit 13 are, excuse me, two plaster casts
13 that were submitted for comparison purposes. And each of the
14 casts has been identified with a, a black marking pen with our
15 crime lab case number, item number and my initials and these were
16 brought to the laboratory by Fran Everett.

17 BY MR. HARDY:

18 Q Are they delineated as to which is right foot and which
19 is left foot?

20 A In, in my examination procedure I, I placed on the
21 bottom of each of the casts the, uh, indication of which shoe
22 type impression it was, either a left shoe or a right shoe. Yes,
23 sir; that is my writing.

24 Q Do you have one for each foot?

25 A Yes; I do. Yes, sir. There is a left shoe impression

1 and a right shoe impression.

2 Q I show you these photographs which are 98, 99 and 100.
3 Can you identify them for me, please, sir? Have you seen them
4 before?

5 A These are State's 98, 99 and 100. I have seen
6 photographs similar to these. These are not the ones I examined
7 though earlier.

8 Q Your bag was right there the last time I saw it. Were
9 your pictures in it? It's been misplaced somewhere.

10 Let me just show you the bag, if I could. And is that what
11 -- This, I think, was in your box that you brought down with the
12 shoes Monday, if I'm not mistaken. If you could just look at all
13 of those, please?

14 A Yes, sir. May I return those to you, please?

15 Q Yes, sir.

16 A I don't believe this has been marked with an exhibit
17 number yet.

18 Q We really don't -- Just look at them first, please.

19 A Okay.

20 MR. HARDY: We'll put 179 on it, please, Your Honor.

21 Q I think you brought these to court; didn't you, Mr.
22 Howard?

23 A Yes; I did. State's Exhibit 179 will be identified as
24 a manila envelope containing a total of twenty photographs,
25 eighteen of which depict shoe impressions.

1 Q I think we've already given those to Mr. Mears.

2 A I believe he does have a copy of these, if, if I, I do
3 recall. And ten of these photographs were examined as comparison
4 to a set of four submitted shoes. Actually, the remaining eight
5 were also compared, but were not inclusive.

6 Q If we could just put these over here for now.

7 MR. HARDY: Your Honor, we'd offer this brown bag
8 which contains the photographs 179 into evidence.

9 MR. MEARS: I don't think we have any objection, Your
10 Honor. Just let me make sure.

11 MR. HARDY: We've already given a copy, I think, to
12 Ms. Leonard.

13 A Each of the photographs has been marked with our case
14 number and, and initials.

15 MR. MEARS: We have no objection, Your Honor, to the
16 remaining photographs.

17 THE COURT: They're admitted without objection.

18 BY MR. HARDY:

19 Q I think you received some shoes into the lab to make a
20 comparison with?

21 A Yes, sir. Yes, sir. There were four pairs of shoes
22 submitted on two separate submissions.

23 Q First, Number 18-B here. I think those were submitted
24 first? Mr. Cromartie's shoes?

25 A State's Exhibit 18-B is identified by our crime lab

1 case number and item number eight, and, uh, have been further
2 identified on each of the two shoes involved. These were
3 identified as Adidas' belonging to Mr. Cromartie. These were
4 submitted along with the, uh, the two casts by Fran Everett.

5 Q The bag is about to tear up. I'm trying to find
6 another bag for you, Mr. Howard. We'll just put them back in the
7 box. I think you brought these down to Court Monday?

8 A Yes; I did.

9 Q Did you receive three other pair of shoes into the evi
10 -- to your lab?

11 A Yes, sir. Yes, sir. Those three were delivered along
12 with the photographs in State's Exhibit 179.

13 Q 16-A, whose shoes are they?

14 A 16-A is identified by our crime lab case number and
15 item number and my initials and these were in a bag labeled "Thad
16 Lucas".

17 Q Number 14-A?

18 A State's Exhibit Number 14-A, again, is identified by
19 our crime lab case number and item number and is a pair of
20 basketball shoes in a bag labeled "Corey Clark".

21 Q What type of shoes were Lucas' shoes and Corey Clark's
22 shoes?

23 A The, uh, the shoes identified as belonging to Mr.
24 Lucas, a pair of Nike basketball shoes.

25 Q Mr. Clark?

1 A Mr. Clark's, contained a pair of Nike basketball shoes.

2 Q Number 27-C, whose shoes are they?

3 A 27-C, the, uh, State's Exhibit 27-C is, again,
4 identified by our crime lab case number and item number, my
5 initials and contained a pair of Converse All Star canvas shoes
6 in a bag marked "Gary Young".

7 MR. HARDY: I ask that he step down here, please?

8 THE COURT: Yes, sir.

9 A (Witness steps down from witness stand)

10 BY MR. HARDY:

11 Q Would you get the plaster cast out for me, please, sir?

12 A Yes, sir.

13 Q Would you --

14 MR. HARDY: Your Honor, with the Court's permission,
15 if he could be allowed to hold them up so the jury can
16 see them and where we could lay them on the rail, or I
17 could hold one and he could hold one, if we could, please?

18 THE COURT: Yes, sir.

19 BY MR. HARDY:

20 Q Could you tell me, the one I'm holding, which shoe is
21 this?

22 A This is the right shoe impression.

23 Q The one you're holding?

24 A Is the left shoe impression.

25 MR. HARDY: If we could display them to the jury,

1 please?

2 THE COURT: Yes, sir.

3 A If one were to view the shoe impressions, you would
4 need to imagine this as a reverse image of the shoe itself in
5 that you are looking at the, the impression as cast this way so
6 that if you were to look at it, it would look like a left shoe
7 when it's actually a right shoe. And, of course, the same for
8 this cast of a left shoe impression. This, this being the right
9 shoe impression and this being the left shoe impression.

10 BY MR. HARDY:

11 Q If we could just place them in the box so we won't
12 break these things.

13 A If I can, I'll place the left one --

14 Q Put the other one here. Photographs, did you look
15 at -- you say you used ten of these photographs?

16 A Yes. Ten of the photographs were --

17 Q Do you know which ten you used?

18 A Yes, sir. Were used in the comparison against the
19 shoes belonging to Mr. Cromartie.

20 Q Did you compare all four pair of shoes to the plaster
21 casts and the print?

22 A Yes; I did. Yes; I did.

23 Q Can you show me which pictures you used?

24 A Yes, sir.

25 Q Are they noted on the back or what?

1 A They are. Each one is noted. Those being the set
2 depicting a, a right shoe impression, these depicting a left shoe
3 impression.

4 Q So then it would be these pictures? Which is which?

5 A All right. These which are --

6 Q Right and left?

7 A -- right and left. These are the same impression under
8 different lighting and photographic conditions, but they do show
9 the, the same, uh, the same impressions, being a left shoe.

10 Q If we could just put a paper clip on them?

11 A Yes, sir.

12 Q Maybe put "L" on -- Do you have a pen that you could
13 put "L" maybe for left foot?

14 A Yes; I do. Yes, sir.

15 Q Just write on the back, "Left".

16 A Of each?

17 Q If you would, please.

18 A Okay.

19 Q And you have pictures you say would be the right foot?

20 A And these other five show the same impression which is
21 a right shoe impression under different lighting and photographic
22 conditions, but, again, are of the, the same shoe impression.
23 All right.

24 Q So you took then the pictures. How did you make your
25 comparison? Take your seat again, please.

1 A (Witness returns to the witness stand) The, both the
2 comparisons with the plaster casts and the photographs were done
3 on a side by side comparison, of course, with measurements being
4 taken of the casts themselves and of Mr. Cromartie's shoes and of
5 the --

6 MR. MEARS: Your Honor, excuse me. I'm going to
7 object to the characterization of anyone's shoes. They
8 were introduced as a particular exhibit number. Whose
9 shoes they are is a matter that's going to have to be
10 determined as a fact. And I think it's inappropriate to
11 have the characterization placed on the shoes for
12 comparisons. So I would object on that basis, most
13 respectfully.

14 THE COURT: All right, sir. Any response?

15 MR. HARDY: They've already been admitted into
16 evidence as to whose shoes they were, Your Honor.

17 MR. MEARS: They were admitted into evidence as an
18 exhibit number having been allegedly taken from a particular
19 person. I think it's inappropriate to continue by saying
20 that these are somebody's shoes. That's something the jury
21 is going to have to determine.

22 THE COURT: Sustained.

23 BY MR. HARDY:

24 Q Did you compare the four pairs of shoes you had?

25 A Yes; I did.

1 Q Against the pictures and as well as the impressions you
2 had?

3 A The two casts of the impressions, yes; I did.

4 Q Okay. Did you come to some conclusion?

5 A Yes; I did.

6 Q And what all -- How all did you do this now?

7 A This was on a side by side comparison.

8 Q Okay.

9 A Also including the use of a ruler for measuring length
10 and width of the impressions and the submitted shoes.

11 Q You used your procedure you used in other cases?

12 A Yes, sir.

13 Q Was this based upon the scientific procedures that
14 you've used in the past?

15 A Yes.

16 Q Based upon -- Did you come to some scientific
17 certainty as to an opinion?

18 A I do have an opinion; yes.

19 Q Okay. Now, --

20 MR. MEARS: Your Honor, I'm going to object to the
21 form of the last question unless there's going to be a
22 response given. There was no response to that particular
23 question. So I'm going to object to the form of the
24 question, that part about scientific certainty.

25 THE COURT: Overruled.

1 BY MR. HARDY:

2 Q Did you come a scientific opinion?

3 A Yes; I did.

4 Q That's based upon your training and experience?

5 A Yes, sir.

6 Q And what was that opinion?

7 A That the, both of the casts, which are included in
8 State's Exhibit 13, and the ten photographs as submitted in
9 State's Exhibit 179, were similar to the, to the, uh, the pair of
10 shoes in State's Exhibit 18-B, which were identified as the shoes
11 of Mr. Cromartie.

12 Q Did you look at the other three pairs of shoes that
13 were submitted to you?

14 A Yes; I did.

15 Q Are they similar?

16 A They, they are not similar, and in the comparison were
17 eliminated as having possibly made the impressions in the
18 photographs and the, the plaster casts.

19 Q Did you make some xerox copies of the bottom of the
20 shoes?

21 A Yes; I did.

22 Q Do you have those with you?

23 A Yes; I do.

24 MR. HARDY: I think we've given those to Mr. Mears.

25 A Each of the xerox copies has been labeled with our

1 crime lab case number and item number and which of the shoes was
2 photocopied.

3 Q Are they all of the same shoe, meaning right or left,
4 or how did you do it?

5 A The -- In, in the, uh, in the case of the item
6 submitted with the photographs, the right shoe was photocopied
7 and in the case of the, uh, the shoes identified as being Mr.
8 Cromartie's, the right and the left shoe were photocopied.

9 MR. HARDY: Show those to Mr. Mears, please.

10 Q I think you said you xeroxed these?

11 A Yes; I did.

12 Q I think you used your item number?

13 A Yes, sir. Yes, sir.

14 MR. HARDY: I think we might -- we may have a
15 different number. If we could correlate the two, please.

16 A Would you like a correspondence to the, to the exhibit
17 number of each?

18 Q Yes. To our exhibit numbers if we could, please.

19 A We could do that.

20 Q Now, you said that you had two of the Adidas?

21 A Correct. Correct.

22 MR. HARDY: If I could borrow the Clerk's stapler,
23 please?

24 Q If you could write on the back which to --

25 A Which State Exhibit Number?

1 Q Be 180.

2 A Is that 180 or 18?

3 Q No. I'm, I'm going to number your xeroxes there 180.

4 It correlates. What does 180 then correlate to?

5 A To State's Exhibit 18-B.

6 Q If you could write that on the back of that, please?

7 A All right.

8 Q Get the next one, please. Be 181.

9 A Yes, sir.

10 Q Which bag does that correspond to?

11 A State's Exhibit 181 would correspond to State's Exhibit
12 Number 16-A.

13 Q If you'd write that on there for me, please. Your
14 number was 11?

15 A Yes, sir. Yes, sir. Our item number on, on case M94-
16 1784.

17 Q Is that what you've written on the back?

18 A Yes, sir. I made two photocopies of State's Exhibit
19 16-A depicting the heel area in one and the sole or the ball of
20 the outsole on the other.

21 Q If we could just staple them together and get the next
22 one, please. Put 182 on it, please.

23 A State's Exhibit 182 is identified with State's Exhibit
24 14-A.

25 Q Do you have one more?

1 A And we have one more which is associated with State's
2 Exhibit 27-C.

3 Q Are each of these xerox copies fair and accurate
4 representations of the bottom of the soles of these four pairs of
5 shoes?

6 A Yes; they are.

7 MR. HARDY: I'd like to exhibit them to the jury,
8 Your Honor?

9 THE COURT: Yes, sir.

10 MR. MEARS: Your Honor, I'm going to object to --

11 THE COURT: Yes, sir.

12 MR. MEARS: -- first of all, they haven't been
13 introduced yet. Secondly, I'm going to object -- the
14 highest and best evidence of what the soles look like are
15 the soles themselves --

16 MR. HARDY: We can do that. We'll do both.

17 MR. MEARS: May I finish my objection?

18 THE COURT: Yes, sir.

19 MR. HARDY: Excuse me. Excuse me. Excuse me.

20 MR. MEARS: To make a xerox copy of a physical item,
21 of physical items of evidence that's already before the
22 Court and then use a xerox of that particular item is
23 not appropriate. The highest and best evidence of what
24 the soles look like in the eyes of Mr., Dr. Howard and
25 these jurors is, in fact, the soles themselves. And I

1 certainly understand the reason, that the shoes are
2 messy and they're probably not the nicest things to
3 handle. But these xerox copies aren't the shoes and
4 they're not the best evidence of what the soles look like.
5 And I would object to it.

6 THE COURT: All right, sir. Mr. Mears, the jurors
7 will have an opportunity to examine the shoes at the
8 appropriate time. I see no problem in admitting these
9 photographic copies. The objection is overruled.

10 MR. MEARS: May I ask for instructions to the jurors
11 that they're not to consider the xerox copies as evidence of
12 what the shoes look like?

13 THE COURT: Yes, sir.

14 Ladies and gentlemen of the jury, the xerox copies
15 are going to be passed around for your convenience at this
16 time in looking at whatever these xerox copies do depict,
17 tread designs, et cetera. They are not to be considered as
18 substitutes for the shoes that have, in fact, been admitted
19 into evidence.

20 MR. HARDY: Could he be allowed to step down, please,
21 Your Honor?

22 THE COURT: Yes, sir.

23 A (Witness steps down from witness stand)

24 BY MR. HARDY:

25 Q If you could hold those two for me, please, Mr. Howard?

1 A Yes, sir.

2 (Whereupon exhibits are shown to the jury)

3 MR. HARDY: I thought I'd introduced them, Your Honor.
4 Maybe Mr. Mears -- If I hadn't, I will. 180, 181, 182 and
5 183, Your Honor. These are for demonstrative purposes.
6 Introduce them, Your Honor.

7 THE COURT: Any objections?

8 MR. MEARS: If they're being introduced for
9 demonstrative purposes in lieu of passing the photographs
10 out, if they're not going to go out with the jurors as
11 part of the evidence that's been admitted, I don't have
12 any objections, Your Honor. If they're being offered as
13 substantive evidence for the jurors to make comparisons
14 based upon these, then I do object on the basis that the
15 highest and best evidence of what the soles look like are
16 the shoes themselves.

17 THE COURT: Any response?

18 MR. HARDY: We're going to show them the shoes too,
19 Judge. I want them to look at the shoes. The Clerk can
20 keep these. We'll have the real shoes out.

21 MR. MEARS: If it's only demonstrative, then I don't
22 have any --

23 THE COURT: Mr. Hardy, if you're going to stipulate
24 at this time that only the shoes will go out as opposed to
25 this, then so be it --

1 MR. HARDY: The Clerk can keep these --

2 THE COURT: So be it. They're admitted --

3 MR. MEARS: I have no objection.

4 THE COURT: -- under those reasons.

5 BY MR. HARDY:

6 Q Step on down here, Mr. Howard. The ones that have been
7 -- 16-A. What does it say on the bottom?

8 A In the case of 16-A, these are Nike Air basketball
9 shoes.

10 Q Step down that way so they can all see.

11 A (Witness complies)

12 Q 14-A, what kind of shoes are these?

13 A These are also Nike shoes.

14 Q 27-C?

15 A These are Converse All Star canvas shoes.

16 Q 18-B?

17 A This, this pair is a pair of Adidas.

18 Q Go ahead and take your seat again, please, sir.

19 A (Witness returns to the witness stand)

20 Q You made your ballistics comparisons and the shoe
21 comparisons?

22 A Yes; I did.

23 Q Is that the extent of your work there, Dr. Howard, on
24 this particular case?

25 A Yes, sir.

1 MR. HARDY: I think it's all been introduced into
2 evidence, if I'm not mistaken.

3 THE COURT: Yes, sir.

4 MR. HARDY: The bullets and everything, I believe.
5 I think everything up here has been offered and admitted.
6 If I'm not correct. Is that correct --

7 THE COURT: Mr. Hardy, I don't know if I know off the
8 top of my head everything is up there. I know quite a
9 bit has been admitted. At the appropriate time we can go
10 back through the list and make sure.

11 MR. HARDY: Thank you. Yes, sir.

12 CROSS EXAMINATION

13 BY MR. MEARS:

14 Q Good afternoon, Dr. Howard.

15 A Good afternoon, sir.

16 Q Dr. Howard, I apologize for having to ask you a series
17 of questions after 5:00 o'clock in the afternoon before this
18 jury. I will do my best to be short and brief and ask you the
19 questions that I need to ask you. But even at this late hour in
20 the afternoon I have to go over a few things with you. Okay?

21 A Very well.

22 Q Now, first of all, you were only given one set of
23 plaster, excuse me, hydrocal prints to compare; weren't you?

24 A Hydrocal casts or casts, casts of shoe impressions?
25 Yes, sir. Just one set.

1 Q So when Mr. Hardy shows you five or six different pairs
2 of shoes, he didn't show you, and no one showed you five or six
3 different shoeprints to make comparisons of; did they?

4 A No. No.

5 Q So -- I'm sorry. Go ahead and --

6 A No. Go ahead.

7 Q So you didn't, you weren't on the scene at the location
8 where these hydrocal prints were taken; were you?

9 A No; I was not.

10 Q Okay. You did not direct or give instructions to or
11 prepare these particular prints for comparison purposes; did you?

12 A No, sir; I did not.

13 Q So you were limited, were you not, in the comparisons
14 to be made because you only had one set of prints to make
15 comparisons of? Would that be a fair statement?

16 A I, I only compared what was submitted to the
17 laboratory; correct.

18 Q And that's common sense. You had one set of prints to
19 compare and that was all? No one brought you any other prints to
20 compare?

21 A Not casts.

22 Q Not casts. Now, you -- and, and I objected and you
23 were using the terms that, so and so's shoes, so and so's shoes.
24 Do you have any direct personal knowledge as to who owned any of
25 these shoes?

1 A No.

2 Q That was identified to you by the people who brought it
3 to you and by the names written --

4 A By the submitters and investigators; yes, sir.

5 Q And you don't know when the individuals were wearing
6 those particular shoes even if they were correctly identified; do
7 you?

8 A That's correct.

9 Q And you don't know whether or not anyone was wearing a
10 particular pair of shoes on April the 10th; do you?

11 A No; I don't.

12 Q You're limited, as a forensic scientist, you're limited
13 by the facts as they're presented to you for examination; are you
14 not?

15 A That's correct.

16 Q And it doesn't take scientific knowledge, does it, to
17 exclude some shoeprints from the impressions you were given to
18 review; does it?

19 A No; it doesn't.

20 Q Okay. It doesn't take --

21 A It, it takes, I think, observation powers and logic;
22 yes, sir.

23 Q And I'm certainly not taking away from your expertise.
24 Please don't misunderstand me. But when any individual is asked
25 to look at a shoeprint, particularly of an athletic sole

1 shoeprint from Adidas, from Nike or some other brand name, then
2 obviously not the same shoe, not the same shoe designed sole,
3 it's not a scientifically required process, is it, to make --

4 A We're, we're using scientific processes whether we
5 realize it or not.

6 Q All of us?

7 A All of us are. But a lay person or a so-called
8 shoeprint expert could and should arrive at the same conclusion
9 in those cases.

10 Q Should agree with the lay person?

11 A Should agree with the lay person.

12 Q Okay. My point is that with regard to the comparisons
13 of the shoeprint and the casts and these shoes, you were limited
14 by the shoes you were given to compare to?

15 A Again, I only could, could operate with what I was
16 given; correct.

17 Q And were you also limited by the quality of the cast
18 print that was brought to you for use?

19 A Yes; partly. Yes; I was. Yes; I was.

20 Q You can only make comparisons of the print that was
21 given to you, and I'm referring to the hydrocal --

22 A Castings.

23 Q -- casts. You are limited somewhat by the quality of
24 that cast; are you not?

25 A Yes. Yes; I was.

1 Q No matter how much scientific observation you provide
2 to that process, there are some limitations that come with the
3 process because --

4 A With, with the evidence; yes, sir.

5 Q Okay. Now, you were asked to look at State's Exhibit
6 27-C, which is Gary Young, has his name on it.

7 A As identified by the package.

8 Q That's what it says. And you looked at this and you
9 make -- it's not the same shoe?

10 A In elimination; yes, sir.

11 Q And you did the same thing with Thad Lucas and with
12 Corey Clark? Those shoes that were identified to you as coming
13 from them?

14 A Yes.

15 Q Okay. Now, I want to just set all of those aside
16 because those are not something that you had to apply a
17 scientific -- I know what --

18 A A, a further examination procedure to?

19 Q Yes, sir. Okay. Now, you've identified photographs,
20 and we've looked at this, we've looked at these photographs
21 before.

22 A Yes; we have.

23 Q Now, these photographs were brought to you to make
24 observations, to assist you in applying your scientific
25 principles to identifying and perhaps making comparisons to these

1 cast prints and other shoes; is that correct?

2 A That's correct; yes, sir.

3 Q Were you given any other shoeprints to look at?

4 A Photographs of shoeprints; yes.

5 Q Okay.

6 A There were an additional eight photographs of
7 shoeprints in State's Exhibit, I, I believe it's 180.

8 Q 179.

9 A 179.

10 Q These are the ones that we've looked at.

11 A Yes, sir. Yes, sir. These, these were examined and
12 were -- In these eight photographs are depicted two separate shoe
13 impressions.

14 Q So, the separate shoe impressions, the two separate
15 ones that are depicted in the remaining photographs, were you
16 given hydrocal casts along with these photographs?

17 A No; I was not.

18 Q Would that have assisted you in making comparisons?

19 A Against the submitted shoes?

20 Q Yes, sir.

21 A No, sir; I don't believe it would have assisted.

22 Q Would it have assisted you in identifying the type of
23 shoes?

24 A Possibly, yes, sir; it would have.

25 Q Looking at the prints that you were given --

1 A Yes, sir.

2 Q -- that relate to the casts, can you tell from looking
3 at those prints, and I believe these are in evidence -- these are
4 the same --

5 A State's Exhibit 98 would correspond to the State's
6 Exhibit -- to State's Exhibit 179.

7 Q At least a portion --

8 A To a portion of these, in this case State's Exhibit 98
9 would correspond as a right shoe impression to the five
10 identified in State's Exhibit 179. And there are two left shoe
11 impressions, State's Exhibits 99 and 100, that would correspond
12 to left shoe impressions identified in 179.

13 Q Now, looking at those photographs, can you make a
14 determination as to whether or not the person wearing those shoes
15 at the time the impression was made was running or walking?

16 A I, I'm not a, an expert in that particular endeavor.
17 But these appear to be walking prints.

18 Q They're fairly flat?

19 A They are very flat. They're full impressions. Do not
20 seem to be distorted in any obvious manner.

21 Q Isn't it -- Well, would it be a fair assumption, Dr.
22 Howard, that an individual running in a pair of athletic shoes
23 with distinctive treads in, on them, if that person was running,
24 the manner in which their feet made contact with the ground would
25 be different than the manner in which their feet made the contact

1 if they were walking?

2 A I guess it would be; yes, sir.

3 Q And, again, applying observation methods to that
4 particular subjective determination, it appears, does it not,
5 that whoever was wearing those particular shoes at that
6 particular time was not running but was walking?

7 A I, I would agree with that; yes, sir.

8 Q Now, with regard to the particular design tread in the
9 hydrocal cast, Dr. Howard, --

10 A Yes, sir.

11 Q -- were you able to determine from looking at the cast
12 the design tread? Does it have a particular name, a particular
13 identifying sole type of configuration in the commercial market?

14 A You mean to be able to put a, a brand name on that?

15 Q Or a design name? For instance, if it's, I show my
16 lack of knowledge of patterns here, but if it's like a quilted
17 design or if it's a herringbone design --

18 A I believe -- I think we've talked about this
19 previously. That, yes, it, it's consistent with what we would
20 consider a herringbone pattern; yes, sir.

21 Q And have you had an opportunity to determine, just from
22 in your research and looking at this case or other cases, how
23 many different types of shoes have herringbone type of sole
24 patterns on them?

25 A Numerous.

1 Q Numerous types of --

2 A I, I personally cannot give you a number, but, yes,
3 there are numerous shoes manufactured, athletic shoes that do
4 have the herringbone pattern.

5 Q Okay. I'm going to show you a book, and I think you've
6 looked at this before. Just for illustrative purposes only, and
7 not for evidentiary purposes, Dr. Howard, I'm calling your
8 attention to a catalog of footwear for Adidas shoes.

9 A Yes, sir.

10 Q And I'd ask -- I'd call your attention to page 61. And
11 could you look at this particular page and determine how many
12 types of shoes are depicted here that have herringbone
13 configured sole patterns?

14 A There are three separate models of shoes shown and each
15 one has a, a herringbone pattern.

16 Q Would that herringbone pattern be similar in design to
17 the hydrocal cast that was given to you for comparison?

18 A Yes. Yes; they would be.

19 Q Okay. Are you familiar, Dr. Howard, with the practice
20 of athletic shoe makers to use the same sole on different types
21 of shoes, interchange the shoes with the uppers, the soles with
22 the uppers?

23 A Yes, sir. I think we've discussed this and, yes; it is
24 a practice. I'm not familiar with how prevalent it is in the
25 industry but it does occur and I believe with each of the

1 manufacturers.

2 Q Adidas, Nike, all of them?

3 A Yes, sir.

4 Q Okay. The three different -- I'm sorry. The three
5 different models you have here, that you've talked to here that have
6 the similar herringbone, are those different upper sole type of
7 shoes?

8 A Yes; they are. If you were to actually hold those
9 shoes you would realize that they're each designed for a
10 different purpose and some have more ankle support than the
11 others. Yes; they're each three different in, in their upper
12 design. Yes; they are.

13 Q You had indicated during your direct examination, I
14 believe, that you made some measurements with regard to these
15 shoes; is that correct?

16 A Yes. Both with the castings, the photographs and the,
17 specifically the, the Exhibit 18-B, which is a pair of Adidas.

18 Q Would it be possible for using the, the practice of
19 interchanging soles with uppers, would it be possible to have a
20 different sole size and different upper size within a half, half
21 a shoe size?

22 A Possibly; yes, sir.

23 Q You could have a ten on a -- a ten and a half sole and
24 a ten upper?

25 A Yes, sir.

1 Q Okay.

2 A Yes, sir.

3 Q Okay. Isn't it, would it be correct, Dr. Howard, to
4 say that applying your scientific process that you've talked
5 about of visualization and measurement and making comparisons,
6 it's still a subjective exercise on your part to make a
7 determination that the cast and any particular shoe is similar?

8 A That, that's correct.

9 Q And that's really -- Isn't that the best you can do
10 given the casts you have and the comparisons you were asked to
11 make?

12 A Yes.

13 Q You can only say it's similar?

14 A That's all I can say.

15 Q Now, unlike the ballistics examinations that you did,
16 you were able to make a determination that the bullets were fired
17 from the same gun? I believe that was your testimony; correct?

18 A On the weapon that was submitted; yes, sir.

19 Q Because you were able to make a determination that
20 looking at the striations and things of that nature, based upon
21 your opinion, they were all fired from the same gun? Is that
22 correct?

23 A Correct.

24 Q Okay. You cannot do that with the shoes; can you?

25 A I cannot do that in this particular case with the

1 submitted castings and then the photographs of that impression
2 that those were cast from.

3 Q Were you made aware by anyone that there were other
4 shoeprints at the scene at the Junior Food Store that had not
5 been photographed?

6 A Uh, not at the time of the submission of these.

7 Q Have you subsequently been made aware?

8 A I have been; yes.

9 Q Okay. So you have not been offered an opportunity to
10 make comparisons even using photographs with any other shoe; have
11 you? In other words, you weren't given photograph --

12 A That, that was submitted or not submitted?

13 Q That were not submitted.

14 A That is correct.

15 Q Obviously, if they were -- You've been made aware there
16 were other shoeprints out there. They were not photographed,
17 therefore you could not have made any comparison?

18 A I, I'm not sure that I was aware they were not
19 photographed, but I, I was made aware that they were not cast.

20 Q Okay. Were you given anything else with regard to this
21 case to make comparisons of other than the ballistics and the
22 shoeprints?

23 A No, sir.

24 Q I want to ask just a couple of questions about
25 verifiability and verifiable certainty and I'll leave, leave it

1 alone. You've made an observation based upon your experience
2 that these shoes are similar; is that correct?

3 A Correct.

4 Q And would you agree that that, given the limitations
5 and given the process, that's a subjective determination?

6 A It is; yes, sir.

7 Q You're not telling the jurors these shoes are the same?

8 A No.

9 Q Or that these prints were made by the same shoes; are
10 you?

11 A No.

12 Q You're simply saying that the best you can say is that
13 they're similar in tread design?

14 A Similar in tread design and appears to be the same in,
15 in shoe length and outsole length and as such the, the shoes, uh,
16 in 18-B could have made the impressions that we see in the
17 castings in both prints.

18 Q And even the photographs that have been identified to
19 you as being the shoeprints that made the, or from which the
20 plaster casts were made, they don't appear to be running; do
21 they?

22 A No.

23 Q You can't tell this jury who was wearing those shoes,
24 18-B, on April the 10th; can you?

25 A No.

1 Q Looking at the impression, you can't tell the jury when
2 the prints or the impressions were made in the soil; can you?

3 A No; I can't.

4 Q You can't tell the jurors, can you, that the other
5 shoes that you were given to, at least compare, were worn by the
6 individuals that were identified to you as belonging to those
7 shoes; can you?

8 A Not of my own knowledge; no.

9 Q You're, you're limited in what you're told; is that
10 correct?

11 A That's correct.

12 Q And you're limited in what you're given to compare;
13 isn't that correct?

14 A That is correct.

15 Q In this case you were given one set of prints to
16 compare; weren't you? Let me rephrase that.

17 A Well, actually, there were two sets of two different
18 types of shoes and only one set of castings.

19 Q Castings. All right. I, I was going to come back.
20 You were only given one set of casts to make comparisons of?

21 A That's correct.

22 MR. MEARS: One moment, Dr. Howard.

23 I don't have any further questions, Dr. Howard.

24 Thank you very much.

25 THE COURT: Mr. Hardy?

1 MR. HARDY: I'd ask that he be excused. I think
2 he probably needs to go to another court tomorrow maybe
3 or go back to work.

4 DR. HOWARD: Back to work.

5 THE COURT: Dr. Howard, you are excused. Thank
6 you, sir.

7 DR. HOWARD: Thank you.

8 THE COURT: Ladies and gentlemen, it looks like a good
9 time for us to recess for the evening. At this time, I
10 again apologize for the redundancy of my cautionary
11 instructions to you, but my apology in no way is meant to
12 minimize the seriousness of you following these instructions
13 throughout this trial.

14 Again, please do not talk with anyone about this case.
15 Don't allow anyone to talk with you about the case or talk
16 about the case in your presence or within your hearing. Do
17 not read anything about the case nor listen to anything or
18 watch anything about the case. Do not read any books,
19 magazines or other reading material or watch any movie or
20 program with a violent theme plot or subject matter.

21 In addition, if you go by the Madison Street Deli or go
22 by the location of where the Junior Food Store was on
23 Jackson Street, please do not give your attention or give
24 any attention to the grounds surrounding those areas.

25 Any further cautionary instructions requested on behalf

1 of the State?

2 MR. HARDY: Thank you, Your Honor; no.

3 THE COURT: Or the Defense?

4 MR. MEARS: None, Your Honor.

5 THE COURT: Thank you, ladies and gentlemen. 9:00
6 o'clock tomorrow morning.

7 Everyone please remain seated while the jury retires.

8 (Whereupon the jury retires from the courtroom,
9 after which the following transpired)

10 THE COURT: Mr. Hadley, the witnesses may be excused
11 until 9:00 o'clock tomorrow morning unless Counsel needs to
12 speak with any of them before they leave.

13 Gentlemen, in regards -- Well, I don't think the best
14 evidence rule applies to tennis shoes or shoes. In regards
15 to, to an objection insofar as whether or not -- for
16 instance, the objection dealing with the photostatic copies
17 of the bottom of the shoes, I think you stated you had no
18 objection if they weren't going to go out as demonstrative
19 evidence. I think that's normally something that I take up
20 at the appropriate time, that is, after the jury has been
21 sent to their room to select a foreperson and begin their
22 deliberations. They're asked to wait to begin their
23 deliberations until we get all of the exhibits together and
24 send them out. You know, at that time we will address the
25 fact as to whether or not anything admitted into evidence

1 should or should not go out with the jury for their
2 consideration.

3 And I think even though it may be, you know, a broad
4 label or characterization put on it as demonstrative, my
5 understanding as to what the real test is, is whether or not
6 it would constitute continuing testimony in some form or
7 fashion. If it's continuing testimony it doesn't go out.
8 If it's not continuing testimony, and has been admitted, I'm
9 not aware of anything to prevent it from going to the jury
10 for their consideration, at this point. I don't know if you
11 gentlemen are aware of something else.

12 MR. MEARS: I don't know. That's, that's the best I
13 could do with objecting to it. I just didn't think it
14 should be done and that was the best objection I could come
15 up with at the moment. I think it's still improper to take
16 -- It's like taking a pistol and taking photographs of it
17 and having the pistol and the photograph. Maybe my
18 objection wasn't well taken. It's the best I could do at
19 the time. It just didn't seem to be fair.

20 THE COURT: All right. Gentlemen, are ya'll in a
21 position -- it's my understanding that -- how many more
22 witnesses do you anticipate, Mr. Hardy?

23 MR. HARDY: Be two or three or so. Four maybe.

24 THE COURT: Do you anticipate resting tomorrow?

25 MR. HARDY: Hope so. It depends on Mr. Mears.

1 MR. MEARS: Don't blame me. Judge, Mr. Hardy has asked
2 me and I told him I anticipate probably three to five
3 witnesses depending upon how he finishes out, what they may
4 do. That's the best estimate I can give the Court at this
5 time as far as scheduling. They'd be relative short
6 witnesses, duration. Three to five at the most, as far as
7 what I can guess.

8 THE COURT: And, of course, that duration may depend on
9 Mr. Hardy to some extent.

10 MR. MEARS: I'm sure Mr. Hardy will be thorough in his
11 cross examination, Your Honor.

12 THE COURT: Gentlemen, what I -- the only reason I'm
13 asking is, are ya'll in a position to -- of course, I'll
14 give you an opportunity. We'll have a brief charge
15 conference tomorrow before you present your closing
16 arguments, if we, in fact, do that tomorrow. It appears
17 that may be possible. My question is, are ya'll in a
18 position at this time to briefly go over requests to charge
19 that have been submitted by each other?

20 MR. MEARS: Now?

21 THE COURT: Yes, sir.

22 MR. MEARS: I'm really, I'm really not, Judge. I would
23 like a little bit of time to process the requests. I think
24 we've got them all submitted, but I really would like --
25 I'll think about it tonight and be prepared to do it

1 tomorrow. I'm really just not prepared to do it this
2 afternoon.

3 THE COURT: All right. Gentlemen, have ya'll had an
4 opportunity to look over the requests to charge that have
5 been submitted by the Defense?

6 MR. HARDY: I think we got one stack and then we got a
7 supplemental stack.

8 MR. MEARS: I've got sixty-one charges. Most of them
9 are fairly standard.

10 MR. HARDY: Judge, could we just follow up on what he
11 said. We present our witnesses, they present their
12 witnesses, and we have our charge conference. Do we
13 anticipate we're going to get to the closing arguments
14 tomorrow or would it be the next day?

15 THE COURT: It's going to depend on what time we get
16 through. If we have time tomorrow we will proceed into it
17 tomorrow. I would think -- I mean, if we finish -- I don't
18 anticipate the charge conference taking more than thirty
19 minutes. I may be wrong. There are some -- I've reviewed
20 the requests to charge. I have some specific questions
21 about some. Some of them, of course, will depend on what
22 the evidence is. Others I have questions about regardless
23 of what the evidence, remaining evidence is. But I, I
24 really don't anticipate it taking more than about thirty
25 minutes. If we finish, you know, the evidence at, at 2:00

1 P. M. tomorrow, then we're going to keep working the rest of
2 the afternoon.

3 MR. MEARS: Your Honor, would the Court -- if we finish
4 that early and then have a charge conference, I really would
5 like at least an hour to prepare for closing. We've got
6 numerous amounts of items of evidence and witnesses. I'd
7 like to have at least an hour to prepare for closing before
8 we do it. I think it'd be very unfair to ask us to do a
9 closing in a case like this on the spur of the moment.

10 THE COURT: Mr. Mears, I, I don't think -- Mr.
11 Cromartie was indicted October of '94. I realize you didn't
12 come in until some time later. But you've been in this case
13 for a year and a half, two years. We've known this case was
14 coming to trial at this time. You have yourself, Mr.
15 Bryant, a very capable attorney, another attorney, support,
16 and other support personnel, and you have this evening. I
17 feel like that you'll have an opportunity to put a closing
18 argument together. All right, sir?

19 MR. MEARS: I appreciate the Court's assessment of my
20 abilities. I think they're highly -- the assessment is
21 highly overrated.

22 THE COURT: We'll be in recess until 9:00 A. M.
23 tomorrow morning.

24 Gentlemen, the Clerk simply wants ya'll to be aware of
25 something. I think that's what he testified to, but just so

1 ya'll are --

2 MR. MEARS: They were all put --

3 THE COURT: And there are eighteen photographs. Isn't
4 there eighteen as opposed to twenty?

5 MR. HARDY: We took out two that had blood on them.

6 CLERK: That's what I want ya'll to know.

7 MR. HARDY: We took out two bloody ones that had
8 already been --

9 THE COURT: Mr. Hutchings just wanted to make sure that
10 ya'll were aware of that.

11 MR. HARDY: Yes, sir. Thank you, David.

12 (Whereupon the Court is recessed for the day, with
13 the proceedings to be resumed the following A. M.)

14 * * * * *

C E R T I F I C A T E

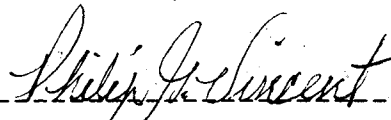
STATE OF GEORGIA

COUNTY OF LOWNDES

I hereby certify that the foregoing proceedings were taken down by me, as stated in the caption, and that the foregoing pages 2222 through 2548 represent a true, correct, and complete transcript of said proceedings.

I further certify that I am neither of kin nor counsel to the parties in this matter, nor am I financially interested in same.

This the 17th day of November, 1997.



PHILIP G. VINCENT, C.C.R.
CERTIFICATE NO: A238
OFFICIAL COURT REPORTER
SOUTHERN JUDICIAL CIRCUIT

IN THE SUPERIOR COURT OF THOMAS COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

CRIMINAL ACTION NO: 94-CR-328

VS

CHARGE: AGGRAVATED ASSAULT
(COUNT 1);
POSSESSION OF A FIREARM
DURING THE COMMISSION OF
A CRIME (COUNTS 2,4,6,8);
AGGRAVATED BATTERY
(COUNT 3);
MURDER (COUNT 5);
ARMED ROBBERY (COUNT 7)

RAY JEFFERSON CROMARTIE
DEFENDANT

CRIMINAL JURY TRIAL UNDER THE
UNIFIED APPEAL PROCEDURE

* * * * *

The following transpired before the Honorable Frank D. Horkan, Judge, Superior Courts, and a Jury, in the Thomas County Courthouse, Thomasville, Georgia, with voir dire and selection of the Jury commencing at 9:35 A. M. on Monday, September the 15th, 1997, and concluding at 10:20 A. M. on Friday, September the 19th, 1997, and the case-in-chief commencing at 10:50 A. M. on Friday, September the 19th, 1997, and concluding at 10:40 A. M. on Wednesday, October 1st, 1997.

* * * * *

APPEARANCE OF COUNSEL:

Representing the State: James E. Hardy, Esq.
Mark E. Mitchell, Esq.
Assistant District Attorneys

Representing the Defendant: Michael Mears, Esq.
Carl A. Bryant, Esq.
Gerard Kleinrock, Esq.

VOLUME VIII OF TEN VOLUMES

(This volume contains the proceedings commencing at 9:00 A. M. and concluding at 5:05 P. M. on Thursday, September the 25th, 1997.)

1 (The ninth day of proceedings commences at
2 approximately 9:00 A. M. on Thursday, September the
3 25th, 1997, with the following transpiring outside of
4 the jury's presence)

5 THE COURT: Good morning, ladies and gentlemen.
6 Are we ready to proceed at this time?

7 MR. HARDY: Yes, sir.

8 MR. MEARS: Yes, Your Honor.

9 THE COURT: Gentlemen, I've got a note from a juror. I
10 don't know which juror. It states, "Being a teacher, I need
11 to make lesson plans and get a substitute for next week.
12 Any guesstimation of the number of days I will need to
13 notify my school system? Thank you."

14 I know we've already previously had a, an estimate as
15 to the guilt-innocence phase and that seems to be running
16 pretty close to the estimate. The sentencing phase, if it
17 reaches that point, was estimated to take two to three days.

18 MR. MEARS: Looking at where we've come to this point
19 and the schedule we've been keeping, I think we've probably
20 overestimated the amount of time that will be needed for the
21 sentencing phase, depending upon what Mr. Hardy does with
22 regard to, assuming, assuming that we get to that stage, how
23 much Mr. Hardy is going to put into the record, go back over
24 the matter, that estimate of two to three days may be
25 substantially too long. That's just my guess at this point

1 looking at how things have moved up to this point. I think
2 we have been pretty much on what we told you the schedule
3 was going to be.

4 THE COURT: Gentlemen, do you have an estimate of the
5 amount of time to actually present the evidence during the
6 sentencing phase if we reach that point?

7 MR. MEARS: The State has to go first. If they put the
8 world during the sentencing, obviously, I've got to be
9 prepared to either rebut or address it. If they don't put
10 up a substantial amount of witnesses, a substantial number
11 of new bits and pieces of evidence, then obviously, my part,
12 or our part is going to diminish considerably depending on
13 what they put up.

14 MR. HARDY: We've already given the Court our notices
15 and we've already heard all the evidence. So I don't think
16 ours will be that long.

17 MR. MEARS: Okay. Probably, probably a day will be the
18 outside estimate then.

19 THE COURT: All right, sir. Thank you.

20 You may bring the jury in.

21 (Whereupon the jury returns to the courtroom,
22 after which the following transpired)

23 THE COURT: Good morning, ladies and gentlemen.

24 Ladies and gentlemen, prior to bringing in our first
25 witness for the day, let me inquire whether or not any of

1 you over the recess have read anything about this particular
2 matter, heard anything about this particular matter, talked
3 with anyone about this particular matter, or seen any
4 specifics at either of the locations in regards to this
5 particular matter? Read any novels, magazines or otherwise,
6 or watched any movies, television programs or otherwise that
7 involve any violent themes, plots, subject matter, things of
8 that nature?

9 Thank you ladies and gentlemen.

10 Ladies and gentlemen, I told you at some point in time
11 during these last two weeks of an estimate of the amount of
12 time that this case would take to try. We told you that the
13 guilt-innocence phase, we anticipated would take about five
14 days, and the case appears to be progressing pretty much
15 along that estimate. I told you if, in fact, the case
16 enters into the second stage, that is the sentencing phase,
17 we would estimate at that time based upon the information we
18 had, that that particular phase would take two to three
19 days. At this point in time we have a little bit of a
20 better estimate in regards to the length of time in the
21 sentencing phase, if, in fact, this case reaches that phase.
22 And at this point in time we anticipate that the evidence
23 for the sentencing phase, again if we reach that point,
24 would take approximately one day. Again, that is an
25 estimate. Of course, the total length of time that the case

1 takes, both the guilt-innocence phase, an estimate -- the
2 sentencing phase will be based to some extent on the amount
3 of time that the jury needs to properly deliberate on the
4 matter and reach a verdict in the matter.

5 So I'm giving you this additional information simply to
6 help you, you plan next week. Again, we anticipate the
7 evidence in the sentencing phase, if we reach that, will
8 take about one day. The total length of time for the
9 sentencing phase, again, will depend on the amount of
10 additional time for the jury to properly deliberate and make
11 up their verdict in that particular matter.

12 I hope that will help you plan next week somewhat.

13 Mr. Hutchings, put that in the file, please, sir.

14 Mr. Hardy?

15 MR. HARDY: Fran Everett.

16 THE COURT: Good morning, Ms. Everett. Have a seat
17 right here, please, ma'am.

18 Would you please raise your right hand?

19 Do you solemnly swear or affirm that the evidence
20 you'll be giving the Court and this jury in the matter now
21 pending before the Court will be the truth, the whole truth
22 and nothing but the truth, so help you God?

23 MS. EVERETT: I do.

24 THE COURT: Thank you, ma'am.

25 Mr. Hardy?

1 FRAN EVERETT

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HARDY:

5 Q State your name for us, please, ma'am?

6 A Fran Everett.

7 Q Where are you employed?

8 A Thomasville Police Department.

9 Q And what do you do for them, please, ma'am?

10 A I'm the Evidence Clerk for the Thomasville Police and
11 Thomas County Sheriff.

12 Q And how long have you been doing that, Fran?

13 A About four years.

14 MR. HARDY: Your Honor, we ask that she be allowed
15 to step down, please?

16 THE COURT: Yes, sir.

17 BY MR. HARDY:

18 Q Step down for me, Ms. Everett.

19 A (Witness steps down from witness stand).

20 Q Just look at all this evidence up here, and can you
21 identify, or are you familiar with the items you see up here?
22 The brown bags?

23 MR. HARDY: Give her a second to look at it, please,
24 Your Honor?

25 A Yes, sir.

1 Q Are you familiar with all those items?

2 A Yes, sir.

3 Q How are you familiar with them, Fran?

4 A The majority of them --

5 Q You need to go back to the stand so the court reporter
6 can hear you, please.

7 A (Witness returns to witness stand) The majority of
8 them that I could see had my initials on them.

9 Q And when something is turned over to you, are you
10 responsible for it then until it's turned over to somebody else?

11 A Yes, sir.

12 Q Do you keep it in a locked place?

13 A Yes, sir.

14 Q And where is that?

15 A Well, my offices are locked, secured area, and I have a
16 secured area with, inside of my office as well.

17 Q And how do you get items from -- Say, the policeman at
18 11:00 o'clock last night found something. What does he get --
19 Where -- What does he do with it or she do with it?

20 A We have a locker inside of their office area, which I
21 have the key to. And they put it in there and leave the key in
22 the lock box for me.

23 Q So then you have a key to the lock box?

24 A Yes, sir.

25 Q So that's how you keep it under safe and secure

1 conditions?

2 A Yes, sir.

3 Q And that's how you would have gotten a lot of this,
4 some of this evidence?

5 A Some of it; yes, sir.

6 Q Some of it would be given directly to you?

7 A Yes, if I'm -- if it happens during the day or they
8 collect it during the day, they bring it directly to me.

9 Q And then how do you -- What's the procedure?

10 A They come to my office and we sign off on it.

11 Q It's signed in to you?

12 A Signed in.

13 Q And then you've kept a log of it there, I think?

14 A Yes, sir.

15 Q I think you have a, you have a typed log in this case?

16 A Most of it is.

17 Q Then do you have sheets that the policemen repair --
18 prepare when they sie -- get something?

19 A I have the originals from what they itemized their
20 stuff, what they was turning in.

21 Q I think that you had brought all of the evidence in
22 this case up to court for Spencer?

23 A Yes, sir.

24 Q I think the two big bags is what you brought it up to
25 court in?

1 A Yes, sir.

2 Q I think there were some clothing items that were
3 retrieved through investigation in this case? Were some clothing
4 items received by you?

5 A Yes, sir.

6 Q And who did you receive them from, please, ma'am?

7 A Chuck Weaver.

8 Q And who is he?

9 A He was an investigator.

10 Q And were the items already denoted as to who they
11 belonged to and then turned into you?

12 A The bags were labeled; yes, sir.

13 Q Yes, ma'am. As to whose clothes were what?

14 A Yes, sir.

15 Q And you've had that stuff in your possession?

16 A Yes, sir.

17 Q Did you get clothes for -- This was on the 13th, I
18 think, of April?

19 A I'm not familiar. Just a minute. The 14th of April.

20 Q You received the items from Weaver?

21 A Yes, sir.

22 Q That would have been what the individuals would have
23 been wearing at the time of their arrest, to the best of your
24 knowledge?

25 A Yes, sir.

1 Q Is that the procedure that's in the jail, is when
2 someone is arrested the clothes are taken and if need be given to
3 you?

4 A Yes, sir.

5 Q It's what they were wearing at the time of their
6 arrest?

7 A I don't always get what they were wearing at the time
8 of the arrest.

9 Q Sometimes you do and sometimes you don't?

10 A Yes, sir.

11 Q Did you get items, clothing items in reference to a Mr.
12 Lucas and Mr. Clark, Mr. Cromartie and Mr. Young?

13 A Yes, sir.

14 Q This first item would be number 14 on your list?
15 Number 14 here, can you identify this for me, please, ma'am?

16 A Yes, sir.

17 Q What's that?

18 A The clothes of Corey Clark.

19 Q And have you -- Did you originally have this bag
20 closed and initialed?

21 A Yes, sir.

22 Q Mr. Clark's clothes are 14?

23 A Yes, sir.

24 Q I think 16 is your next number. What's 16?

25 A The clothes of Thad Lucas.

1 Q Were these likewise sealed and marked by you?

2 A Yes, sir.

3 Q Are those your initials down here?

4 A Yes, sir.

5 Q And 17, excuse me, 15, have you got that on your list?

6 A Yes, sir.

7 Q What did you write on 15?

8 A A bag containing white and blue boxers.

9 Q Shirt?

10 A Yes. A T-shirt.

11 Q Was that turned in by Weaver?

12 A Yes, sir.

13 Q I think Number 19, I think, and 20. Would you refer to
14 those numbers, please, ma'am? 17? Let me bring these items.
15 Please look at these items. 19 and 17 and 20 and 18. 17, 18,
16 19, 20, 22.

17 Have you had a chance to look at those items?

18 A Yes, sir.

19 Q Do you know what they are?

20 A Yes, sir.

21 Q What are they?

22 A The clothing that was turned in.

23 Q Whose clothing?

24 A Jeff Cromartie's.

25 Q Each of those bags belonged to Cromartie?

1 A Yes, sir.

2 Q That would have been 17, 18, 19, 20 and -- Is that the
3 last number?

4 A 21 and 22.

5 Q 27 here?

6 A 27?

7 Q Yes, ma'am. 27. Do you know what that is?

8 A Yes, sir.

9 Q What's that?

10 A Clothes of Gary Young.

11 Q Did you also, with each of these sets of clothing,
12 receive shoes?

13 A Yes, sir.

14 Q Look at these bags for me. 18-B. You already have an
15 18 here. That's 18-B. Is that how you numbered the shoes, with
16 the letter versus the number, to go with the number?

17 A Yes, sir.

18 Q Can you identify these bags, 18, 14, 27 and 16?

19 A Yes, sir.

20 Q What are they?

21 A 14, shoes belonging to Corey Clark.

22 Q And what size are they?

23 A Eleven.

24 Q Did you initial each of these shoes?

25 A I believe I did.

1 Q Okay. 14? 16? 14-A, Your Honor. Excuse me. 16-A?

2 A 16-A is the Nikes, is Lucas.

3 Q Do you have a size on them?

4 A Ten and a half.

5 Q 18-B?

6 A 18-B is Jeff Cromartie, Adidas.

7 Q What size?

8 A I'm not familiar.

9 Q 27-C?

10 A 27-C is the black Converse, Gary Young.

11 Q Converse All Stars?

12 A Is that Converse?

13 Q Do you have a size on them?

14 A Size ten.

15 Q I think the shoes were taken from you to the lab, or by
16 you or someone had came and got them from you at the police
17 department?

18 A The first pair that was on Jeff Cromartie, I took to
19 the lab. And the last three pair was taken by Det. Stevens.

20 Q I think you let Mr. Mears see the evidence and I've
21 seen the evidence in times past?

22 A Yes, sir.

23 MR. HARDY: She's with the Court.

24 CROSS EXAMINATION

25 BY MR. MEARS:

1 Q Good morning, Ms. Everett.

2 A Good morning.

3 Q How are you doing?

4 A Fine.

5 Q Ms. Everett, I want to just make sure that I understand
6 and that we've got the correct chain of custody of this evidence
7 from the officers who collected it, wherever they collected it,
8 to you so that we can have an idea, when you say 14-A came from
9 here, that we've got the right information for each one.

10 A Okay.

11 Q Now, would you please look at your chain of custody
12 sheet for Number 14? That would be, I believe you've identified
13 that as Corey Clark's clothing; is that correct?

14 A Yes, sir.

15 Q Okay. Now, who did you receive 14 from?

16 A Chuck Weaver.

17 Q Excuse me?

18 A Chuck Weaver.

19 Q Is there anything on your chain of custody receipt to
20 show where Mr. Weaver got this clothing?

21 A He listed his location as jail justice center.

22 Q And so based upon the records that you have, it would
23 indicate that the clothing that was collected and attributed to
24 Corey Clark would have been the clothing he was wearing at the
25 day of his arrest. Would that be a fair statement?

1 A Yes, sir.

2 Q Okay. Now, and that would be the only clothing that
3 you had given to you that was attributed to Corey Clark, other
4 than the tennis shoes?

5 A Yes, sir.

6 Q Would that be a correct statement?

7 A Yes, sir.

8 Q Okay. And please check your documents as much as you
9 need. I just want to make sure that's all of the clothing that
10 was tendered into evidence to the evidence custodian that related
11 to Corey Clark.

12 A As best I can remember.

13 Q Okay. Now, when you receive clothing like this in a
14 bag or however it's delivered to you, do you go through the
15 clothing to look for any items of evidence, money, change,
16 anything like that in these bags?

17 A I usually look at the evidence sheet that they turn in,
18 and I don't barely look all the time. If it comes sealed I try
19 not to bother it.

20 Q And it's not, that's not your responsibility; is that
21 correct?

22 A I check to see what they had listed and kind of look at
23 the bag, but I don't search the evidence.

24 Q If they say they were giving you a shirt, you'd look in
25 to make sure it was a shirt?

1 A Right.

2 Q And if they say they've given you a pair of trousers,
3 you just make sure it's a pair of trousers?

4 A Right.

5 Q So you don't go through the pockets or things like
6 that; is that correct?

7 A Right.

8 Q Now, with Corey, Corey Clark's clothing there was this
9 multi colored shirt and a pair of green trousers. Is there
10 anything else at all that you see indicated, that was turned over
11 to you, other than the shoes, that the police officers collected
12 as it relates to Corey Clark? Any other clothing or anything
13 else?

14 A No, sir.

15 Q And it would only have been the clothing he was wearing
16 on the day of his arrest; is that correct?

17 A (Nods head affirmatively)

18 Q And what does your records reflect the date that Mr.
19 Weaver collected the clothing?

20 A 4-14.

21 Q 4-14?

22 A Um-hum (affirmative).

23 Q Okay. Now, I'm going to ask you, if you will, to do
24 the same -- if you'll look at your record with regard to the
25 clothing that was collected from Thaddeus Lucas, Number 16?

1 Could you please look at your chain of custody sheet on that? Do
2 you have that, Ms. Everett?

3 A Yes, sir.

4 Q Ms. Everett, would you tell the ladies and gentlemen of
5 the jury where this particular bag of evidence, Number 16, came
6 from first of all? Who gave it to you?

7 A Chuck Weaver.

8 Q Does it indicate where Mr. Weaver got this particular,
9 these particular items of clothing?

10 A Jail justice center.

11 Q On what date?

12 A 4-14.

13 Q And would that indicate that this would have been the
14 clothing that Mr. Lucas was wearing on the day of his arrest? Is
15 that correct?

16 A Yes, sir.

17 Q And do you have any notations there as to what he
18 collected?

19 A Nike tennis shoes, multi-colored shirt, brown jeans,
20 corrugated jeans.

21 Q Did Mr. Weaver make a notation if they were shorts?

22 A No, sir.

23 Q Would, would you have pulled these out? Do those
24 appear to be, at least not full length trousers?

25 A Right.

1 Q Okay. Did the notation from Mr. Weaver show that he
2 collected shorts?

3 A No, sir. He didn't indicate that; but I did.

4 Q You did it when you got it and looked at it? Your
5 sheet says shorts on it?

6 A Right. Jean shorts.

7 Q And a multi-colored shirt; is that correct?

8 A Yes, sir.

9 Q Okay. Is there anything else that was turned into you
10 by the investigating detectives, other than the clothing, that
11 Mr. Lucas was wearing the day of his arrest?

12 A No, sir.

13 Q Now, do you have any clothing -- The clothing that was
14 related to Gary Young, what's your number on that? Is it Number
15 27?

16 A Yes, sir.

17 Q Okay. And does that evidence sheet indicate where
18 items, the items in bag 27 came from?

19 A No, sir.

20 Q Does it show the date that they were taken from Mr.
21 Young?

22 A Yes, sir. 6-14.

23 Q 14th. The evidence -- Would that indicate to you
24 looking at the sheet that this was the clothing that Mr. Young
25 had on at the time of his arrest?

1 A Yes, sir.

2 Q And does it show anything other than a pair of short
3 pants and a white T-shirt? Well, there's some socks in here
4 also. Does it show anything else?

5 A No, sir.

6 Q And with regard to the clothing of Mr. Cromartie, does
7 your record show what clothing was turned in to you by Det.
8 Weaver? Do you have a sheet and number relating to Mr.
9 Cromartie's clothing? Do you understand which bag -- we've
10 talked about Thaddeus Lucas, Corey Clark and Gary Young. Which
11 one's related to Mr. Cromartie?

12 A When he turned it in, he just turned in, listed as ten
13 bags containing clothing.

14 Q As how many bags?

15 A Ten. And each bag with the suspect's -- some of the
16 bags have suspects' names and clothing and shoes in it.

17 Q All right. On Number 27, there's no name on the bag;
18 is there?

19 A This outside bag will be my bag. The shoes were in
20 another bag.

21 Q On the inside of the bag it says Gary -- I won't put it
22 all in there. Just look -- so the ladies and gentlemen of the
23 jury can see. His name appears inside?

24 A Right. This is the bag he turned in.

25 Q Right. And so each one of the bags, the bag inside of

1 the bag would have the name relating to the individual that was
2 arrested; is that correct?

3 A Yes, sir.

4 Q Okay. Now, with regard to the clothing that was
5 attributed to Ray Cromartie, bag 18. Was that one of the bags of
6 clothing?

7 A Yes, sir.

8 Q Does it indicate where bag 18 came from? I know you
9 got it from Det. Weaver. Does it show where he picked it up?

10 A No. On his property form, it has location of property
11 obtained, he just put jail.

12 Q And he -- Would that indicate to you that item 17 came
13 from the clothing that he was wearing when he was arrested?

14 A 18; yes.

15 Q It says he got it from the jail; is that right?

16 A Right.

17 Q Okay. Now, again, did you go through the clothing to
18 determine what kind of clothing Mr. Cromartie was -- I mean, what
19 was in it? A shirt, excuse me, a pair of trousers, a shirt and
20 some underwear; is that correct?

21 A Yes, sir.

22 Q Did you go through the bags to determine, excuse me,
23 through the clothing to determine whether there was any items in
24 this bag or in --

25 A In the pockets?

1 Q In the pockets.

2 A No, sir.

3 Q Would you look through there and see if you see any
4 items in the pockets?

5 A (Witness complies) A lottery ticket.

6 Q What's the date on the lottery ticket?

7 A March the 26th.

8 Q March 26th. Does it show what -- any identifying,
9 where the store was or anything like that?

10 A No; I don't think so.

11 Q It's not a winning ticket, I suppose?

12 A I don't guess so.

13 Q Okay. Would you put that back in where you found it,
14 please, if you don't mind. And are there any other items? Look
15 if you would. Are there any other items in that, in the
16 trousers?

17 A No, sir.

18 Q Now, you also have a bag that's marked bag 17. Where
19 did that bag, according to your record, where did that bag come
20 from?

21 A That was one of the ten he turned in.

22 Q Excuse me?

23 A That was one of the bags he originally turned in.

24 Q Does it say on your sheet whose clothing it was?

25 A No, sir.

1 Q Is there any, anything in your records to show that
2 this clothing was Mr. Cromartie's clothing?

3 A No, sir.

4 Q Is there anything in your records to show where this
5 clothing came from?

6 A He's got it listed as jail.

7 Q Got it listed as jail. Does he attribute it any
8 particular individual?

9 A No, sir.

10 Q Did you go through this bag and determine who this
11 belonged to? I mean, did you go through any of the pockets or
12 anything?

13 A No, sir.

14 Q Did, did you have any discussions with anyone or was
15 this attributed to being Ray Cromartie's clothing?

16 A You mean, did I ask if they were?

17 Q Yes, ma'am.

18 A No, sir.

19 Q Would you just look through the pockets and see if you
20 can see anything that would identify this clothing? This --
21 What is that object there?

22 A This is a picture of some children.

23 Q Children?

24 A Um-hum (affirmative).

25 Q Is there any names or anything on that?

1 A No, sir.

2 Q Okay.

3 A A penney.

4 Q A penney. Okay. And is there any record that you've
5 got to show who these pants belong to, or where they came from?

6 A No, sir.

7 Q So, as far as your records indicate, Number 17, there's
8 no determination as to where those clothes came from or who they
9 belonged to; is that correct?

10 A No, sir.

11 Q Now, with regard to Number 20, did your records reflect
12 where Number 20 came from and whose clothing, there appears to be
13 a shirt in here, whose clothing this was?

14 A Jeff.

15 Q Okay. Does it say where it came from?

16 A That was one of the bags.

17 Q One of the bags that says jail?

18 A Right.

19 Q And it appears to be a flannel type of shirt; is that,
20 that correct?

21 A Well, I had it listed as a flannel jacket.

22 Q Flannel jacket. Number 19, whose, whose clothing is
23 this attributed to be according to your records?

24 A Jeff.

25 Q Jeff. And, again, it appears to be a flannel jacket

1 type shirt; is that correct?

2 A Yes, sir.

3 Q And Number 22. I'm sorry. Who does this belong to
4 according to your records? From the jail?

5 A It came from there.

6 Q Okay. Does it attribute it to any particular
7 individual?

8 A No, sir.

9 Q Okay. This has been sealed. It doesn't appear to have
10 been broken but one time; is that -- It appears not to have been
11 broken when we looked at it before. What, what does it show on
12 your records that this is?

13 A A white T-shirt, extra large --

14 Q Huh?

15 A White T-shirt, extra large, with a phrase on one side
16 of it.

17 Q What does it say?

18 A "Get my knowledge at a white college? I don't think
19 so."

20 Q Okay. And what does that say?

21 A "Education is an important element in the struggle for
22 human rights".

23 Q Okay. And that was attributed to whom?

24 A I don't have a name on it.

25 Q Do you know who -- Is there anything in your records to

1 indicate who that belonged to?

2 A No. No, sir.

3 Q Ms. Everett, based upon your experience as evidence
4 technician, excuse me, as someone who collects and keeps it,
5 would it be unusual for someone to arrive at jail under arrest
6 wearing this many articles of clothing?

7 A I don't know.

8 Q Well, just, just apply your, your experience, would it
9 be unusual for someone to arrive at jail under arrest wearing two
10 flannel jackets, a T-shirt, three pairs of pants --

11 A No, sir.

12 Q It would be somewhat unusual; wouldn't it?

13 A Yes, sir.

14 Q So, would it be a fair assumption that they didn't
15 arrive at jail wearing all these clothing; the clothing was
16 picked up from somewhere else and brought to the jail? Would
17 that be a fair assumption?

18 A Yes, sir.

19 Q You've identified the tennis shoes of, those tennis
20 shoes that were in bags with the name Corey Clark, Gary Young and
21 Thaddeus Lucas. Did they arrive in separate bags like this?

22 A No, sir.

23 Q How did they arrive?

24 A They was in the bags with the clothing.

25 Q Okay. So, the bag that you've identified as having

1 Corey Clark's clothing in it had the tennis shoes; is that
2 correct?

3 A Yes, sir.

4 Q And the bag that had Gary Young's name on it, the
5 tennis shoes would have been in that bag?

6 A Yes, sir.

7 Q And the bag that had Thaddeus Lucas' tennis shoes, are
8 attributed to Thaddeus Lucas, was in the bag with Thaddeus Lucas'
9 clothes; is that correct?

10 A Yes, sir.

11 Q Would that indicate, based upon your records, that
12 those were the shoes that they were wearing on the 14th of April?

13 A Yes, sir.

14 Q Is that correct? Now, the shoes that you've identified
15 as having been turned in to you that belonged, that were
16 attributed at least by the bag as belonging to Ray Cromartie,
17 were they in the bag with his clothes?

18 A Yes, sir.

19 Q Which bag did the tennis shoes come out of?

20 A The one that had the white T-shirt, purple pants and
21 underwear.

22 Q Okay. So that would have been the bag that these shoes
23 would have been, come from?

24 A Yes, sir.

25 Q Is that correct?

1 A Yes.

2 Q Is there anything in your records to indicate where or
3 when that bag or those -- these tennis shoes came to be in the
4 jail?

5 A Came to be in the jail?

6 Q Yes, ma'am.

7 A No.

8 Q The item, or bag that's been marked State's Exhibit 30-
9 B and 30-A, would you look at your, your custodian log for that?

10 A Um-hum. Yes, sir.

11 Q Okay. And where did these come from, according to your
12 log?

13 A I received them from Chuck Weaver.

14 Q Did you ever release it to anyone after it was turned
15 in to you?

16 A Yes, sir.

17 Q And to whom did you release it to?

18 A My supervisor, Glenn Hutchinson.

19 Q Okay. Did Mr. Hutchinson eventually return it to you?

20 A Someone else did.

21 Q Okay. So Mr. Hutchinson picked it up from you?

22 A Yes, sir.

23 Q And who does your record -- What, what does your record
24 -- Who returned it to you?

25 A Jim Grady with the F. B. I.

1 Q With the F. B. I. Did anyone else ever take it out of
2 your possession after Mr. Grady returned it?

3 A No, sir.

4 Q Okay. Several people have looked at it since then but
5 always in your presence; is that correct?

6 A Yes, sir.

7 Q I've looked at it, Ms. Leonard has looked at it but it
8 was always in your presence; is that correct?

9 A Yes, sir.

10 Q Ms. Everett, I'm going to hand you -- I'm not going to
11 mark this, but I think you've got the original. But I want to
12 hand you a document that appears to show one item with a quantity
13 of three. It's a shoe, shirt and pants. Would you look at that
14 and see which one of those -- Can you -- Do you have the original
15 there in front of you?

16 A Um-hum. That's the one I associated with Gary Young.

17 Q And that shows your initial receipt of the shoes, Gary
18 Young's shoes, his shirt and pants, at least, what was attributed
19 to him; is that correct?

20 A Yes, sir.

21 Q Does your evidence show when and who picked that up and
22 took it out of your possession?

23 A Bob Stevens came and got the shoes.

24 Q And when was that?

25 A 10-17 of '96.

1 Q 10-17 of '96?

2 A Yes, sir.

3 Q Do your records show it ever having been taken out
4 before 10-19 of '96?

5 A No, sir.

6 Q Who brought it back according to your records?

7 A The shoes?

8 Q Yes, ma'am.

9 A I haven't received them back.

10 Q And so they were taken out 10-17 of '96?

11 A Yes, sir.

12 Q And they have not been put back in your possession
13 since then; is that correct?

14 A Yes, sir.

15 Q Okay. Would you look at the same record as it relates
16 to Corey Clark's shoes? As I understand it, you, you created a
17 separate sheet for the shoes for Mr. Young since they were taken
18 out and nothing else was taken out; is that correct?

19 A Say that again.

20 Q Okay. Did you -- Does your record show that any other
21 article of Mr. Young's clothing was ever taken out from you by
22 Mr. Stevens, by Mr. Grady, or anyone from the F. B. I. or
23 anywhere else?

24 A No, sir.

25 Q There was no tests or anything done on any of Mr.

1 Lucas' clothes, as far as you know?

2 A No, --

3 Q I'm sorry. Mr. Young. I didn't mean to confuse you.

4 A No, sir.

5 Q Would you look at your same type of evidence sheet as
6 it relates to Mr. Corey Clark's shoes?

7 A Okay.

8 Q When -- Does it show that the shoes were taken out of
9 your possession at some time?

10 A Yes, sir.

11 Q And when were those shoes taken out?

12 A 10-17-96.

13 Q 10-17-96. Does it ever show the shoes coming back to
14 you?

15 A No, sir.

16 Q And who took them out?

17 A Bobby Stevens.

18 Q Okay. And would you do the same thing for Mr. Lucas'
19 shoes.

20 A 10-17.

21 Q Did the shoes ever come back to you?

22 A No, sir.

23 Q Okay. And the same thing for Mr. Cromartie's shoes?

24 A Cromartie's shoes was taken before. His was taken on
25 5-27.

1 Q Of what?

2 A Of '94.

3 Q Of '94. So Mr. Cromartie's shoes were taken out in May
4 of 1994?

5 A Yes, sir.

6 Q When were they returned to you?

7 A They wasn't.

8 Q And the other shoes were taken out two years later?

9 A Approximately.

10 MR. MEARS: Okay. Thank you, Ms. Everett.

11 REDIRECT EXAMINATION

12 BY MR. HARDY:

13 Q Just to correct something on the Gary Young sheet. It
14 shows when Mr. Weaver got his clothes, it was on what date? You
15 may refer to mine, please.

16 A The ten bags?

17 Q No. This sheet that Mr. Mears had you look at.

18 A On 6-14.

19 Q And then they were turned in to you? All this stuff
20 was turned in to you? All these clothing items were turned in to
21 you?

22 A Yes, sir.

23 Q And you said that Mr. Lucas' shoes, 18-B, were
24 associated with the bag 18, this bag?

25 A Yes, sir.

1 MR. HARDY: She's with the Court.

2 THE COURT: Anything further of this witness,
3 gentlemen?

4 You are excused. Thank you.

5 MR. HARDY: Glenn Hutchinson.

6 Good morning. Would you raise your right hand?

7 Do you solemnly swear or affirm that the evidence
8 you'll be giving this Court and this jury in the matter now
9 pending before the Court shall be the truth, the whole truth
10 and nothing but the truth, so help you God?

11 SGT. HUTCHINSON: I do.

12 THE COURT: Mr. Hardy?

13 SGT. GLENN HUTCHINSON

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HARDY:

17 Q State your name for us, please, sir?

18 A Glenn Hutchinson.

19 Q Where are you employed?

20 A Thomas County Sheriff's office.

21 Q How long have you been with them, please, sir?

22 A Five and a half years.

23 Q Where'd you work before that?

24 A I worked for the Albany Police Department for twenty-
25 one years.

1 Q And what'd you do with Albany Police Department?

2 A I was a supervisor for the identification and
3 laboratory section.

4 Q And tell us a little bit about your training and
5 experience in Albany and Thomasville for twenty-six years?

6 A I attended the F. B. I. Fingerprint Classification
7 school, F. B. I. Advanced Latent Fingerprint school, Advanced
8 Palmprint school. I am certified by the Peace Officers Standards
9 and Training Council of Georgia as a crime scene technician. I
10 have processed evidence for fingerprints and made fingerprint
11 comparisons for the G. B. I., F. B. I., Secret Service, the Naval
12 Investigative Service and various other law enforcement agencies
13 within the nineteen county area of southwest Georgia.

14 Q Have you ever testified in a court of law as an expert?

15 A Yes; I have.

16 Q Are you familiar with the new A. P. system?

17 A Yes; I am.

18 Q What is that?

19 A It's the State's automated fingerprint identification
20 system.

21 Q Do you continually go to educational classes in
22 reference to fingerprinting?

23 A Yes; I do. I normally have twenty hours of in-service
24 training in fingerprint comparison each year. I also am a member
25 of the International Association of Identification. I attend a

1 training seminar once a year, a week long training seminar,
2 sponsored by the International Association of Identification.

3 Q Are you a member of any Georgia organizations?

4 A I am a member of the Georgia Division of I. A. I.

5 Q The what?

6 A I. A. I., International Association of Identification.

7 Q Have you testified in state courts and federal courts?

8 A Yes; I have. I've testified in federal courts in
9 Thomasville, Tallahassee, Albany. State and Superior Courts in
10 Thomas County, Colquitt County, Grady County and Decatur County,
11 Dougherty County, Seminole County.

12 Q Do you routinely now do fingerprint examinations for
13 other agencies in southwest Georgia?

14 A Yes; I do. Various agencies from around this area
15 bring their fingerprints to me. I occasionally do fingerprint
16 processing of evidence for the State Crime Lab in Moultrie. I'm
17 occasionally called there to make positive identifications of
18 deceased persons.

19 Q And did you do that up there at the floods in Albany a
20 couple of years ago?

21 A Yes; I did. I was asked to participate with the
22 G. B. I. Morgue Identification Team in the fingerprint section
23 identifying the remains of some four hundred and twenty-three
24 caskets that were disinterred during the flood.

25 Q Do you do this daily, fingerprinting, fingerprint work?

1 A Yes, sir; it's a daily thing for me.

2 Q For the last twenty-six years?

3 A I have done it since 1978.

4 MR. HARDY: Your Honor, we'd submit him as an expert in
5 the field of fingerprint analysis.

6 THE COURT: Mr. Mears?

7 MR. MEARS: Your Honor, could I just ask him a
8 couple of questions?

9 THE COURT: Yes, sir.

10 MR. MEARS: Is he being submitted --

11 MR. HARDY: Yes. Submit him as an expert; yes, sir.

12 MR. MEARS: As a crime scene technician expert also.

13 I didn't hear that request. I just want to make sure --

14 MR. HARDY: Crime scene, lifting of the prints,
15 analysis of the prints, giving his opinion as to a print;
16 the whole gamut, his expertise.

17 THE COURT: Gentlemen, my understanding is, is the
18 tender as an expert relates to fingerprints, processing,
19 comparison, identification. Is that correct?

20 MR. MEARS: Not as a crime scene technician.

21 MR. HARDY: That too, Your Honor. He does that too.

22 THE COURT: All right, sir.

23 MR. MEARS: Is that --

24 MR. HARDY: That's -- Excuse me.

25 Q You also, as to the crime scene work too?

1 A Yes; I do, occasionally; yes.

2 Q And do you have training and experience in that?

3 A I am certified by the Peace Officers Standards and
4 Training Council.

5 MR. HARDY: Thank you.

6 MR. MEARS: I just wanted to make sure he didn't
7 leave anything out, Judge.

8 Your Honor, may I have just a few questions on voir
9 dire with regard to qualifications in both of those areas?

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION

12 BY MR. MEARS:

13 Q Mr. Hutchinson, just very briefly. You've outlined
14 your training and background with regard to fingerprint
15 identification and the schools you've gone to. With regard to
16 crime scene, being an expert in crime scene technician, what does
17 that mean insofar as police terminology is concerned?

18 A A crime scene technician goes to the scene. He
19 processes, collects evidence. He processes for fingerprints,
20 photography. Transports evidence to the state crime lab.

21 Q So, as a crime scene technician you would not -- you
22 would not solely be looking for fingerprints; you'd be looking at
23 everything that would be of evidentiary value in a particular
24 crime scene; would you not?

25 A That's correct.

1 Q And your training has been related, not only to
2 fingerprints, but also to the overall general collection of
3 evidence at the crime scene; is that correct?

4 A That is correct.

5 Q Okay. Now, with regard to your training, very briefly,
6 what has been your technical training with regard to crime scene
7 evidence collection? Not, not specifically referring to
8 fingerprints, but in general?

9 A The crime scene technician certification entails
10 fingerprint classification, development of fingerprints, advance
11 latent fingerprint comparison, photography for investigation,
12 evidence collection, evidence presentation. Those are the
13 courses it entails.

14 Q And you're also given training in how to present that
15 evidence in court; are you not?

16 A That's correct.

17 Q And you're given courses in how to testify in court;
18 are you not?

19 A That's correct.

20 Q Okay. Now, with regard to the fingerprint area of your
21 expertise, I'd like to ask you some questions in two particular
22 areas. One would be the gathering and collecting of suspected
23 latent fingerprints. And then the second area that I'll ask you
24 some questions about is the identification. I'd like to separate
25 those two out. Is that okay?

1 A Okay.

2 Q It's easier for me to keep up with. Now, with regard
3 to the gathering and collecting of fingerprint evidence, what
4 specialized training have you had in the use of chemicals as they
5 relate to the extraction and preservation of fingerprints at
6 crime scenes?

7 A A forty hour course in fingerprint -- evidence
8 processing for fingerprints through the use of chemicals or
9 powders. The lifting of those latent prints.

10 Q How many of those -- Is that one forty hour course?

11 A I've attended -- that's in the basic crime scene
12 technician course. I've attended numerous over the years, over
13 the nineteen years that I've been doing it, courses in developing
14 fingerprints and lifting fingerprints. New techniques, new
15 chemicals.

16 Q Okay. With regard to the use of chemicals, whatever
17 those chemicals may be, outside of the basic forty hour course,
18 what formal training have you had in the use of chemicals to
19 identify, preserve and extract fingerprints from surfaces?

20 A That is part of our week, week long training seminar
21 every years sponsored by the International Association of
22 Identification. It deals -- there are classes within that week
23 long seminar that deal with the use of chemicals, what chemicals
24 to use on certain surfaces, what chemicals react to certain
25 secretions from the human body. And, as I say, I've been doing,

1 attending those seminars since 1978. I don't know the exact
2 number of classes that we've gone to.

3 Q On the average -- I know these are week long seminars
4 that cover all of crime scene processing. Is that correct?

5 A That's correct.

6 Q And, and a portion of each week's seminar would relate
7 to the subject matter of the use of chemicals to locate, preserve
8 and extract fingerprints; is that correct?

9 A That's correct.

10 Q Approximately what percentage of each of those
11 seminars, and I'm not, I'm not asking you tell me how many
12 seminars, but approximately how much time is devoted to the use
13 of chemicals?

14 A Probably, it would be an estimate, about fifty percent.

15 Q Fifty percent of the entire crime scene technician
16 seminar is related to the use of chemicals and fingerprints?

17 A That's correct.

18 Q And so, two and a half days out of a week long seminar
19 is related to the use of chemicals in extracting, locating and
20 processing fingerprints?

21 A That's correct.

22 Q It's an extremely important part of your job as a
23 fingerprint technician; would you agree?

24 A Yes; it is.

25 Q Okay. Now, with regard to the identification, what

1 formal training have you had outside of the basic courses and the
2 week -- the yearly seminar, yearly one week seminar that you go
3 to, what formal training courses have you had in the
4 identification procedures used to identify known and unknown
5 fingerprints?

6 A Those are also -- comparison classes are also given
7 during the week long seminar. I do it on a daily basis, compared
8 them on the job since 1978, so there is no other formal training.
9 The State does not offer any more training than the basic
10 fingerprint classes.

11 Q So the basic fingerprint classes contained within that
12 original forty hour course that you get to get your crime scene
13 certification, outside of that there are no formal classes
14 relating to identifying fingerprints; is that correct?

15 A The only formal classes the State offers are the forty
16 hour basic classification and the forty hour fingerprint
17 comparison or advanced latent fingerprints, and then there are
18 some private agencies who do classes or present seminars. There
19 is one on the advanced palmprints which I've attended.

20 Q What about the F. B. I. course? How much of that
21 particular -- You said you'd been to an F. B. I. course. How
22 much of that was devoted to the identification of fingerprints?

23 A The forty hour advanced latent fingerprint course is
24 devoted to the comparison and charting of latent fingerprints.

25 Q Now, in the week, the one week long yearly seminar that

1 you say you've attended for the past nineteen years, we know half
2 of that is spent on the use of chemicals in preserving, locating
3 and extracting fingerprints. How much of that, of the other two
4 and a half days is spent on identification of fingerprints?

5 A Probably ten percent.

6 Q Half a day?

7 A Half a day; yes, sir.

8 Q So that the other two days are devoted to all of the
9 other areas of crime scene technicians' work; is that correct?

10 A That's correct.

11 Q Shoeprints, footprints, photography, measurements,
12 that's all done in two days?

13 A That's correct.

14 Q Videotape reproduction?

15 A I don't remember any videotape reproduction that I've
16 had in any seminars.

17 Q How about the use of videotape surveillance cameras in
18 the use of those tapes as part of an evidence crime scene? Have
19 you ever had any training in that?

20 A No, sir; I have not.

21 MR. MEARS: Your Honor, I have, at this time I have
22 no objections to Mr. Hutchinson being classified as an
23 expert in those two areas for which he's been submitted.

24 THE COURT: All right, sir. He will be recognized as
25 an expert in those two areas.

1 Mr. Hardy?

2 REDIRECT EXAMINATION

3 BY MR. HARDY:

4 Q Do you consult with the regional lab up in the Albany
5 P. D. or the Dougherty County S. O., Boots Windham, up there on a
6 weekly basis, daily basis, with them too?

7 A Yes, sir.

8 Q Do you talk to other people all the time about your
9 life in fingerprint work?

10 A Yes; I do.

11 Q Is that all you do, is basically fingerprint and
12 fingerprint and fingerprint?

13 A Yes, sir; that's correct.

14 Q The Madison Street Deli, did you go out there on April
15 the 7th?

16 A Yes; I did.

17 Q And did you look at the crime scene there?

18 A Yes, sir; I did.

19 Q Was you the one that retrieved the shell casings?

20 A Yes, sir; I did.

21 Q Did you look at the scene?

22 A Yes, sir.

23 Q Were you able to gather anything at the scene?

24 A I recovered one spent .25 caliber shell casing.

25 Q Any fingerprints legible there?

1 A I processed the scene for fingerprints. I developed no
2 identifiable fingerprints. I did develop some fingerprints but
3 they were not identifiable.

4 Q What do you mean by identifiable?

5 A Fingerprints lack sufficient ridge detail,
6 characteristics to be identifiable.

7 Q Do you have to have -- If you find something, then you
8 have to have something to compare to it?

9 A That's correct.

10 Q Can you just automatically say, "Hey, that's Bill's"?

11 A No, sir; I cannot.

12 Q If you don't have something to compare it to, getting a
13 fingerprint doesn't mean anything?

14 A That's correct..

15 Q Did you go out to the Junior Food Store?

16 A No, sir; I did not.

17 Q Did you receive some evidence from the Junior Food
18 Store to process?

19 A Yes, sir.

20 Q Who'd you --

21 A I received two full cans of Budweiser beer, twelve
22 ounce cans, one piece of torn cardboard with white letters
23 B-U-D-W on one side, and twelve latent fingerprint backing cards,
24 three by five backing cards.

25 Q Items Number 2 and 3, can you identify them for me,

1 please, sir?

2 A Yes, sir. These are the two Budweiser beer cans that I
3 received with my initials, G. P. H., on the bottom of the can
4 and --

5 Q Why are they black colored?

6 A I'm sorry?

7 Q Why do they just got that color to them?

8 A I have processed them with fingerprint powder. That's
9 fingerprint powder on them.

10 Q Were you able to get any legible prints off of the two
11 beer cans?

12 A No, sir; I was not. I initialed off on them and
13 outside of both of the bags.

14 Q Did you process both of these?

15 A Yes; I did.

16 Q When did, when did you get the beer flat and the cans
17 from Ken Collins?

18 A I received them from Fran Everett on April the 14th of
19 1994.

20 Q Do you have access to the evidence room?

21 A Yes. I oversee the operations of the Evidence and
22 Property Management Section.

23 Q Excuse me. Let me move this out of the way. Number 4
24 here, can you identify that for me, please, sir?

25 A Yes, sir. It's the torn piece of cardboard that I

1 received also on the --

2 Q Did you process that?

3 A Yes, sir. I did process this.

4 Q Has it got any water damage to it?

5 A I'm sorry?

6 Q Does it have any water damage to it?

7 A It does not appear to have any to me.

8 Q Is that the way you received it?

9 A Yes, sir; it is.

10 Q You've initialed it, I think?

11 A My initials are on the bottom, I think.

12 Q Did you process that one?

13 A Yes, sir; I processed this using the super glue fuming
14 method.

15 Q What's that?

16 A It entails placing this piece of cardboard in a tank.
17 I use a glass tank, very much like a fish aquarium with a top on
18 it. I use a small cotton fiber filter to place in the tank. The
19 filter is impregnated with sodium hydroxide. And super glue, a
20 few drops of super glue are squirted on the cotton fiber filter.
21 The sodium hydroxide, it acts as a catalyst to make the super
22 glue fume and it looks very much like a cigarette smoking in an
23 ashtray. The fumes adhere to any fingerprint that might be on
24 the object. It appears as a whitish deposit. You then have to
25 process it with black fingerprint powder to enhance the ridge

1 characteristics in the fingerprints that you've developed.

2 Q Is that some of that chemical technique that Mr. Mears
3 was just asking you about?

4 A Yes, sir; it is.

5 Q How long has super glue -- is that a common acceptable
6 procedure in the scientific, or in the fingerprint folks -- do
7 fingerprint folks do that all the time?

8 A Yes, sir. That's one of the most common methods of
9 developing fingerprints.

10 Q And was a print developed on that?

11 A Yes, sir. One fingerprint.

12 Q Then what do you do?

13 A I compare the -- I photograph the fingerprint once I
14 develop it on this piece of cardboard. It was photographed with
15 a fingerprint evidence camera, which photographs one to one
16 image. I then lift this fingerprint from the cardboard with
17 fingerprint lifting tape, which looks very much like scotch tape.
18 The fingerprint is lifted and placed on a white three by five
19 backing card, being a white background and the ridges being black
20 when you place it on that card, you can see the print much better
21 than a white photograph.

22 Q I show you Number 23, I believe it is, here first,
23 please, sir.

24 A These are thirty-five millimeter photographs of the
25 fingerprint developed on the piece of cardboard.

1 Q Number 4 there?

2 A I'm sorry?

3 Q Item Number 4. 23 are photographs of the print
4 developed on item Number 4?

5 A Right. Correct. A piece of cardboard.

6 Q You took them?

7 A No, sir. These were taken by Agent Ken Collins of the
8 G. B. I. who was present with me when we developed this
9 fingerprint.

10 Q If you could put them back in there. This was done
11 over where?

12 A It was done at the jail justice center, Sheriff's
13 Department, here in Thomasville.

14 Q Are those fair and accurate representations of the
15 print that was developed by the super glue?

16 A Yes, sir; it is.

17 Q 164 here, can you identify that for me, please, sir?

18 A This is a three by five latent print backing card.
19 This is the card I placed the latent fingerprint from the piece
20 of cardboard onto once I lifted it with the tape.

21 Q Is that what you just testified about?

22 A Yes; it is. My initials are on the back.

23 Q And the other side, what's on the other side?

24 A This is a diagram of the piece of cardboard. The
25 little "X" represents the approximate area of where I lifted the

1 fingerprint from on the piece of cardboard. Details of the
2 incident here are incident dates and times, the location and my
3 initials here.

4 Q Now, did you get other cards from Ken that he had
5 lifted at the store?

6 A Yes; I did. I received twelve other latent print
7 backing cards.

8 Q Number 165, if you could look at that for me, please,
9 sir?

10 A These are the twelve latent print backing cards that I
11 received from Fran Everett in the evidence room. The backs of
12 the cards indicate they were lifted by Agent Ken Collins of the
13 G. B. I. I've initialed the back of each of the cards, and
14 dated, my initials are on the back and the date in blue ink.
15 These cards display both partial latent fingerprints and latent
16 palmprints.

17 Q Now, you have these prints. Did you need to something
18 to compare them with?

19 A Yes.

20 Q And did you have prints obtained from various people to
21 make comparisons to these?

22 A Yes; I did. They were prints in my file.

23 Q Which prints did you compare to these?

24 A I compared --

25 Q The tab, Number 4, and then these twelve other cards?

1 A I compared the known fingerprints of Ray Cromartie,
2 Corey Clark, Thaddeus Lucas and Gary Young.

3 Q Did you also have the deceased?

4 A Yes. I had the postmortem prints of the deceased.

5 Q Put those back. Paper clips?

6 A I'm sorry.

7 Q Is that the procedure you used? You have something you
8 want to compare and then you have something to compare it to?

9 A That's correct.

10 Q Did you compare these twelve -- Were you able to get
11 any positive identification on these twelve?

12 A No; I was not.

13 Q What are you looking for when you make a fingerprint
14 comparison?

15 A Each fingerprint -- there are three basic types of,
16 pattern types of fingerprints. There are loops, arches and
17 whirls.

18 Q Loops?

19 A Arches and whirls.

20 Q Okay.

21 A Within the fingerprint pattern there are -- in the
22 identifying characteristics, the ridges form identifying
23 characteristics within the fingerprint pattern such as
24 bifurcations, a forking of one ridge into two, ridge endings, a
25 ridge ends abruptly between two ridges. There are dots. Just

1 what the word implies, a dot. An island or an enclosure where
2 one ridge splits into two, travels for a short distance, comes
3 back together to form an island or an enclosure. Those are
4 identifying characteristics within the fingerprint pattern and
5 they are unique to that person.

6 Q Are fingerprints unique to each individual?

7 A Yes; they are.

8 Q Does anybody have the same fingerprints?

9 A No one -- No two people can have the same identifying
10 characteristics within a fingerprint pattern. They can have the
11 same pattern type. We may all have a loop on our left thumb, but
12 the characteristics that the ridges form within that loop pattern
13 are not the same on anyone, not even identical twins or siamese
14 twins.

15 Q Everybody's fingerprints are different?

16 A Yes, sir.

17 Q Now, you say you looked at the fingerprints of each of
18 the people involved insofar as Mr. Lucas, Mr. Young, Mr.
19 Cromartie and even the deceased, Mr. Slysz?

20 A That's correct.

21 Q Now, I think you have the print cards, which is 163.
22 Is this the print card that you used in reference to Mr.
23 Cromartie?

24 A Yes, sir; it is.

25 Q That was rolled by which officer?

1 MR. MEARS: Your Honor, may we approach the Bench?

2 A The signature says Henry Williams --

3 THE COURT: Yes, sir.

4 (Whereupon Counsel confer at the Bench, during which
5 the following transpired)

6 MR. MEARS: The witness has introduced --

7 THE COURT: I know.

8 MR. MEARS: This guy he had --

9 THE COURT: I've got a note right here. There's
10 something on one side --

11 MR. MEARS: -- a previous D. U. I. conviction. My
12 objection is that it's being flashed around in front of the
13 Jury. The Jurors sitting right there can see it. There's
14 two Jurors right there within two feet of it. It's not
15 necessary to flash it in front of them.

16 THE COURT: Cover it up.

17 MR. MEARS: I'm afraid covering it up in front of the
18 Jury or making any alterations now is going to -- I don't
19 see any reason why they have to be shown that right now.

20 (Conclusion of Bench conference)

21 BY MR. HARDY:

22 Q This is the print card you used of the known prints of
23 Mr. Cromartie?

24 A That's correct.

25 Q You had print cards of the other individuals likewise?

1 A Yes, sir.

2 Q And you then would look at, say, this particular card
3 of Mr. Cromartie and look at it and find those swirls and islands
4 and grooves and dots and things like that?

5 A That's correct.

6 Q And you did that for each of the individuals?

7 A Yes; I did.

8 Q This other bag, which is 184, does it include
9 palmprints and fingerprints of the subjects you were just talking
10 about?

11 A Yes, sir; it does.

12 Q Are these what you used in these comparisons?

13 A That's correct.

14 Q Looking at the swirls and the islands and the dots and
15 the other identifying characteristics?

16 A That's correct.

17 Q And where on the beer tab did you get this print?

18 A On the top portion of it, what appears to be the top
19 portion of it. The painted side of it.

20 Q Okay. Were you able to identify that particular print
21 from the top of the beer carton?

22 A Yes; I was.

23 Q And how did you do that?

24 A I compared the identifying characteristics within that
25 fingerprint pattern to the known fingerprint on the fingerprint

1 card.

2 Q And were you able to come to a determination as to
3 whose fingerprint, which finger it was on the beer carton?

4 A Yes; I was.

5 Q Whose finger was it on the beer carton?

6 A The Defendant's, Ray Cromartie, left thumb.

7 Q Left thumb. Did you make a chart, diagram showing
8 that?

9 A Yes; I did.

10 MR. HARDY: Your Honor, we'd offer, I think we've not
11 done that, 23 and 184 into evidence. I think they have
12 not been offered. 23 are the photographs and 184 are the
13 fingerprint cards.

14 THE COURT: 184, Mr. Hardy?

15 MR. HARDY: Yes, sir. 184. The bag with the
16 fingerprint cards he just looked at.

17 MR. MEARS: Your Honor, we don't have any objections
18 to either 23 or 84 --

19 MR. HARDY: 184.

20 MR. MEARS: Excuse me. 184.

21 THE COURT: Admitted without objection.

22 BY MR. HARDY:

23 Q You made that chart. Let me show you Number 166, and
24 ask if you could look at this for me, please?

25 A This is a chart enlargement that I made of the known

1 fingerprint of Ray Cromartie and an enlargement of the print
2 lifted from the top of the piece of cardboard.

3 Q Now, you look for points of comparison between the
4 prints?

5 A That's correct.

6 Q And you look for a minimum number of points of
7 comparison?

8 A There is no set number. Each fingerprint is unique.
9 The characteristics within that pattern are unique to that
10 fingerprint. But I do use a standard of nine. Most courts
11 accept eight to twelve points of identification.

12 Q You won't call one until you at least see nine?

13 A That's correct.

14 MR. HARDY: If you could -- Ask him to step down,
15 please, Your Honor?

16 THE COURT: Yes, sir.

17 A (Witness steps down from witness stand)

18 BY MR. HARDY:

19 Q Now, the side over here you're talking about the --
20 which is which?

21 A The ink fingerprint is the fingerprint, the known
22 fingerprint of the, from the fingerprint card. This is the
23 latent fingerprint that was lifted from the piece of cardboard,
24 the latent fingerprint.

25 Q So the one over here on this side is the one from the

1 beer carton?

2 A That's correct.

3 Q That would be the right hand side. It says latent
4 fingerprint.

5 A Um-hum (affirmative).

6 Q And this would be from the --

7 A Fingerprint card, the known fingerprint.

8 Q Now, how do you go about comparing the fingerprints?
9 Start down here and show these ladies first, please?

10 A Okay. Characteristic number one, identifying
11 characteristic number one in the known fingerprint is a ridge
12 ending. And in the latent fingerprint an identical ridge ending.
13 Identifying characteristic number two is also a ridge ending. It
14 appears in the known fingerprint flowing up from the bottom, end
15 abruptly between two ridges. An identical ridge ending appears
16 here in the latent fingerprint in the same location and ends
17 abruptly between two ridges. Number three is also a ridge ending
18 that flows up from the bottom of the print and ends abruptly
19 between two ridges. The same identical ridge ending is present
20 in the latent fingerprint. Number four is a ridge ending flowing
21 down from the top of the print in the known fingerprint. An
22 identical ridge ending flows down from the top in the latent and
23 ends abruptly between two ridges. Number five is a ridge ending
24 flowing in from the right side of the known print. An identical
25 ridge ending flowing in from the right side of the latent in an

1 identical location. Number six is a ridge ending flowing in from
2 the left side of the known print. It's in the same furrow that
3 characteristic number five, they're both in the same ridge furrow
4 but do not meet each other. That same identical ridge flows in
5 from the left side of the latent and ends abruptly in the same
6 spot here in the latent print. Number seven is also a ridge
7 ending. It flows down from the top of the known print and ends
8 abruptly between two ridges. In the latent print it flows down
9 from the top and ends abruptly between two ridges in the same
10 identical place. Number eight is also a ridge ending. It flows
11 up from the bottom of the prints and ends abruptly between two
12 ridges. It does the same thing in the latent print, flows up
13 from the bottom and ends abruptly at the same location in the
14 latent fingerprint. Number nine is also a ridge ending that
15 flows up from the bottom and ends abruptly between two ridges.
16 It flows up from the bottom in the latent print and ends abruptly
17 between two ridges in the same identical place. And number ten
18 is a ridge ending that's here in the core, the center of this
19 fingerprint, and ends abruptly here at the top of the recurve of
20 the ridge above it. It also is the exact same location here in
21 the latent finger print. This is a whirl pattern. This is the
22 second most common fingerprint pattern of the three basic
23 fingerprint patterns.

24 Q Step down here and show these ladies and gentlemen?

25 A Number one, again, is a ridge ending that flows in from

1 the top of the known latent and ends abruptly between two ridges.
2 That same identifying ridge ends here abruptly between two ridges
3 in the latent fingerprint, same identical spot. Number two is a
4 ridge ending flowing up from the bottom. It ends abruptly here
5 between two ridges. The same identical point here on the latent
6 fingerprint and ends in the same identical place. Number three
7 is a ridge ending that flows up from the bottom and ends abruptly
8 between two ridges in the known. Flows up from the bottom in the
9 latent and ends at the identical location between two ridges
10 abruptly. Number four is a ridge ending flowing down from the
11 top of the known print. Also down from the top of the latent
12 fingerprint and it ends in the identical same location. Number
13 five is the ridge ending coming from the right side of the known,
14 ending abruptly between two ridges. It enters from the right
15 side of the latent and ends abruptly between two ridges at the
16 same location. Number six flows in from the left side within the
17 same furrow and ends abruptly between two ridges. In the latent
18 print it does the exact same. It flows in from the left side and
19 ends abruptly between two ridges in the same furrow as number
20 five. Number seven is a ridge ending flowing down from the top
21 of the latent fingerprint, ending abruptly. It flows down from
22 the top in the latent and ends abruptly between two ridges.
23 Number eight is a ridge ending which flows up from the bottom,
24 ends abruptly. In the latent print, exact same location, flows
25 up from the bottom and ends between two ridges abruptly. Number

1 nine is a ridge ending flowing up again from the bottom of the
2 known fingerprint, ending abruptly. Same location on the latent
3 fingerprint. It flows up, ends abruptly between two ridges. And
4 number ten is a ridge ending, a ridge within the core of the
5 fingerprint that flows up from the bottom and ends abruptly. It
6 does the exact same thing in the latent fingerprint, flows up
7 from the bottom and ends abruptly in the same location.

8 MR. HARDY: Your Honor, we'd offer this chart, 166,
9 into evidence.

10 MR. MEARS: No objection.

11 THE COURT: Admitted without objection.

12 BY MR. HARDY:

13 Q Did you just stop at ten? Are there more points of
14 comparison?

15 A There are fifteen that I counted in that latent
16 fingerprint. I only charted ten to keep the chart uniform and
17 not have to cross any of those red lines, identifying lines
18 there.

19 Q You found fifteen?

20 A Fifteen.

21 Q That's from this beer tab right here?

22 A That's correct.

23 Q And whose fingerprints are on this beer tab?

24 A Ray Jefferson Cromartie.

25 Q Did you go over to Bainbridge and, with Chuck about the

1 brown car?

2 A Yes; I did.

3 Q Did you fingerprint the car?

4 A No, sir; I did not.

5 Q Why not?

6 A I was not asked to fingerprint it. I only went with
7 Inv. Weaver. He had asked me to go with him that day. He was
8 not familiar with the location of the wrecker service that had
9 this vehicle. I had some other evidence to take to Decatur
10 County in another case and I rode over with him.

11 Q So that car wasn't processed?

12 A Not by me; no, sir.

13 Q Is there any doubt in your mind whatsoever that that's
14 Ray Cromartie, Ray Jefferson Cromartie's fingerprint on that beer
15 tab?

16 A No, sir; none at all.

17 Q Any two people in the world have the same fingerprint?

18 A Not the same identifying characteristics; no, sir.

19 MR. HARDY: If I could have a second, please, Your
20 Honor?

21 THE COURT: Yes, sir.

22 BY MR. HARDY:

23 Q The shell casing, I think, you found at Madison Street,
24 you turned in to the evidence locker, or you -- you took it up to
25 Moultrie?

1 A Yes, sir. Turned it over to Jim Howard at the crime
2 lab.

3 Q Can you identify that for me?

4 A Yes, sir. That is the shell casing. It has my
5 initials on it and the date, 4-9-94.

6 Q And that was all that you were able to retrieve at that
7 particular location?

8 A That's correct.

9 Q Is that Ray Jefferson Cromartie that you found his
10 fingerprint on the beer tab in the courtroom this morning?

11 A Yes, sir; he is.

12 Q Would you identify him if you see him?

13 A Yes, sir. He's seated at the Defense table with the
14 blue shirt on (indicating the Defendant).

15 MR. HARDY: Thank you.

16 RECROSS EXAMINATION

17 BY MR. MEARS:

18 Q Mr. Hutchinson, I want to go back and ask you some
19 questions about the Madison Street Deli crime scene, and then
20 we'll talk about fingerprints and your work at the Junior Food.
21 But first, I want to concentrate on your work at the Madison
22 Street Deli. Is that okay?

23 A Yes, sir.

24 Q Okay. Now, with regard to the Madison Street Deli,
25 were you the primary crime scene technician at that particular

1 location?

2 A Off. Weaver was actually doing the scene. I was only
3 asked to process for fingerprints, and that's the only thing that
4 I did, and collect that one shell casing. Those are the only
5 things that Off. Weaver asked me to do.

6 Q You also observed a videotape; did you not?

7 A Yes; I did.

8 Q And that videotape was back in Mr. Griffin's office;
9 was it not?

10 A Yes; it was.

11 Q I'm handing you what's been shown as State's Exhibit
12 32. It's already in evidence. But would you just look at that
13 just to make sure that you recognize that as being the videotape
14 that you looked at in Mr. Griffin's office on April the 7th of
15 1994?

16 A My initials are on the bottom of the package. I don't
17 have any initials on the tape, so I, I don't know if this is the
18 exact tape.

19 Q Assume for my question that the item has been
20 identified by other individuals who said that that's the one they
21 took out of Mr. Griffin. Now, how long did you spend viewing
22 that particular videotape on April the 7th of 1994?

23 A I viewed the -- probably no longer than two or three
24 minutes or so. I viewed the entry of the person into the store,
25 his route around the counter to the cash register, and then back

1 out the front door. That's the only portions of it that I
2 viewed.

3 Q Were you ever asked to view the videotape at any other
4 time for the purpose of determining whether latent prints should
5 be looked for at other locations in the store?

6 A No, sir. That was the only time that I viewed it as
7 far as looking, looking to where to process the likely surfaces
8 that might be processed is at the store.

9 Q Okay. Are you -- You are aware that that's an
10 approximately two hour videotape totally? Are you aware of that?

11 A I, I -- No, sir; I don't really know how long it is.

12 MR. MEARS: Your Honor, at this time we would request
13 the Court to allow us to play the entire video to the jury?
14 It's in evidence. We feel that it's relevant and, the
15 arguments we've made already, I would ask for this to be
16 our opportunity to play the video to the jury while I have
17 Mr. Hutchinson on the stand to ask him questions with
18 regard to crime scene processing. He's been qualified as
19 an expert, not only as a fingerprint expert, but also as a
20 crime scene technician. I want to ask him questions about
21 the videotape as it relates to the processing of the crime
22 scene and identification.

23 THE COURT: Are you speaking of the entire two hours,
24 Mr. Mears?

25 MR. MEARS: Yes, sir. Yes, sir.

1 THE COURT: Overruled.

2 MR. MEARS: Okay. Then subject to my exception to the
3 Court's ruling, Your Honor, could I be allowed to play
4 certain --

5 THE COURT: Excuse me just a moment.

6 Ladies and gentlemen, let me ask you to step to your
7 jury room for just a moment.

8 (Whereupon the jury retires from the courtroom,
9 after which the following transpired)

10 THE COURT: Why don't you tell them this looks like a
11 good opportunity to go ahead and take our mid-morning recess
12 (indicating to Bailiff). Why don't we take about a fifteen
13 minute recess at this time.

14 Mr. Mears?

15 MR. MEARS: Yes, Your Honor.

16 THE COURT: We have previously covered this matter and
17 I, I think my ruling on it was clear, but maybe it was not.
18 Now, on Monday, I believe, or one day this week, we spent
19 lunch at the deli, so to speak. We watched this entire
20 tape. And my indication to you at that time was if you can
21 show me something specific on the tape which satisfies me
22 that it is relevant to the issues for this jury to decide,
23 then we will address that issue and, if I'm satisfied it's
24 relevant, allow the jury to watch that portion of the tape.

25 Now, I think during the time period the tape was being

1 viewed Counsel had an opportunity to, to watch the
2 numerical, for lack of a better terminology, or not knowing
3 the technical terminology, there are numbers shown on the
4 screen which Counsel can identify, did identify as to
5 specific portions of the tape where specific matters might
6 be that Counsel thinks is relevant so that we could show
7 those pertinent portions, if there are, in fact, pertinent
8 portions. I, at this time, still am not satisfied that the
9 entire two hours of other customers coming and going is
10 relevant.

11 MR. MEARS: I understand it, Your Honor. And what I
12 started to say and perhaps I should have asked the jury to
13 leave before I started the request, but I wasn't arguing
14 with your ruling. My offer, my request is to play the
15 entire tape. If the Court is, and which you have, denied
16 that request, then I was going to ask the Court subject to
17 my exception to not play the whole tape, to play specific
18 portions. There are several portions that I think that
19 should be played. Several portions toward the end of the
20 tape where there appear to be several black males entering
21 the store, not purchasing anything, looking out the door --

22 THE COURT: Can, can you secure your notes and, and
23 tell me what specific portions and what those portions
24 depict?

25 MR. MEARS: One moment, Your Honor. While Mr.

1 Kleinrock is looking for that, we made notations as to time
2 from the beginning and the notations I would display on the
3 screen, the time on the tape. I will show you the specific
4 times when I can find my note pad. There is several
5 instances about at -- we started playing the tape at 11:20.
6 Eight minutes into the tape, eight minutes into the tape
7 there appears to be an individual wearing a bandanna on his
8 head with a jacket covering a sweatshirt with a hood on it
9 come into the store and is never seen leaving the store. I
10 assume he left but apparently went under the camera. The
11 person had what they say on the street is a do rag, a gang
12 rag. That's the way gang members identify themselves in
13 some particular locations, by wearing a bandanna tied around
14 their head. According to my observations the person looked
15 very much like Gary Young. Now, the Court may take a
16 different opinion of that. But I think that's up to twelve
17 members of this community to determine whether or not Gary
18 Young was in that store or not that night.

19 THE COURT: Mr. Mears, there's no evidence at this time
20 that anybody else besides Mr. Wilson was in the deli when
21 the individual came in and shot him. There's no evidence
22 whatsoever that anyone else was in there.

23 MR. MEARS: Surely if Mr. Young came in, checked the
24 store out, saw how many clerks were in there. At that time
25 I think there were two clerks in there. He went back

1 outside and waited until the other clerk left with his
2 girlfriend or lady friend and then came back in the store.
3 That's certainly a, not an implausible assumption for jurors
4 to make considering it was Mr. Young's gun that shot Mr.
5 Wilson. I can't think of anything more relevant than the
6 jury being asked -- The State has played that --

7 THE COURT: Do you have someone that is going to
8 identify this individual as Mr. Young?

9 MR. MEARS: No more than the State --

10 THE COURT: Or, or identify this individual as, as
11 being -- have somebody that's going to testify that in their
12 opinion this individual could be Mr. Young?

13 MR. MEARS: No more than the State has anyone who's
14 testified --

15 THE COURT: But the State has --

16 MR. MEARS: May I finish, Your Honor?

17 THE COURT: -- put somebody on the witness stand that
18 has said that. Now, if you, if you have a witness that is
19 going to say that, who is going to view that portion of the
20 tape and say that, then, yes, sir; you may play that
21 portion. But, otherwise, --

22 MR. MEARS: The State, the State hasn't put anyone up
23 that's identified that shooter as Mr. Cromartie.

24 THE COURT: What are the other portions of the tape?

25 MR. MEARS: There's no portion of that tape, Your

1 Honor, that identifies Mr. Cromartie. The F. B. I. couldn't
2 even do it.

3 THE COURT: My question is, what other portions of the
4 tape do you purport to play?

5 MR. MEARS: I want the whole tape played, Your Honor.
6 I'll rest on that. If the Court's going to rule that
7 irrelevant, that's all I'm going to offer, because, Your
8 Honor, the State can put the tape in; they cannot identify
9 Mr. Cromartie as being the shooter. The F. B. I. with all
10 of its sophistication couldn't identify it, then I've got a
11 right to put up the tape to show that Mr. Young was the
12 person who came into that store. The jurors can look --
13 they looked at Mr. Young then. They can look at the tape
14 and make a determination of whether the person who did the
15 shooting was Mr. Young. It was his gun. He's admitted he
16 was wearing -- that he's worn gang colored scarfs on his
17 head before. Your Honor, this is a gang related incident.
18 The Court can, can assume that my argument is implausible,
19 but I assure the Court, this is not an implausible argument.
20 This matter involved a gang from West Side and a gang from
21 Cherokee Apartments. It was an invasion of one gang's
22 territory. Mr. Young was the head of the gang. And I've
23 got a right to have the jury look at that tape. Mr.
24 Cromartie's got a right to have the jury look at that entire
25 tape, Judge. The State put it up there with the assumption

1 that the shooter was Mr. Cromartie. Why can't we put the
2 tape up with the assumption that the shooter was Mr. Lucas?
3 Nobody has identified Mr. Cromartie. No one has identified
4 him other than the real shooter as having ever worn this
5 particular jacket. There's certainly no evidence to link
6 him to that jacket or that hat. I would submit there's more
7 evidence linking Mr. Young to the Madison Street shooting
8 than there is linking Mr. Cromartie. No one has said that
9 that was Mr. Cromartie's pistol. Everyone has said it's Mr.
10 Young's pistol.

11 THE COURT: What other parts of the tape, Mr. Mears?

12 MR. MEARS: I want the whole tape played, Your Honor.
13 I, I think we're entitled to have the tape played,
14 specifically that portion dealing with individuals coming --
15 As a matter of fact, Keith Redding is shown on that tape at
16 least three different times. Now, I know he's been out of
17 this, this tape, out of this case because the State backed
18 out. But Mr. Redding was in the tape. There was obviously
19 a lookout coming and going during that tape. The jurors
20 have a right to look at that.

21 THE COURT: There's no evidence in the record that Mr.
22 Redding or Reddick is in the tape.

23 MR. MEARS: Your Honor, I have made my offer to play
24 the tape. If the Court is going to disallow me to play the
25 evidence, then I understand the Court's ruling. I can't

1 argue anything else other than I argued. The tape speaks
2 for itself. The evidence speaks for itself. And I ask the
3 Court to allow me to play the entire tape.

4 THE COURT: Mr. Mears, I'm not going to allow you to
5 play the entire tape. Now, I will consider specific
6 portions of it if you can satisfy me that they are relevant.

7 MR. MEARS: I want to play that portion of the tape
8 beginning with the time that Mr. Gary Young came into the
9 store, or the person that I am supposing the jurors might
10 consider as being Mr. Young, until the end, because they've
11 got to make a comparison of the individuals coming into the
12 store, making visual comparisons of their body types, their
13 heights, their skin color, the complexion of their skin,
14 color of their skin, the depth of the color of their skin,
15 and make a comparison to the person who went in and did the
16 shooting.

17 THE COURT: I don't agree.

18 MR. MEARS: I understand, Your Honor.

19 THE COURT: What is the -- Does the State have a
20 position?

21 MR. HARDY: I don't see the relevance of the whole
22 tape. As to what instances he wants to play, I think he
23 looked at it Monday at lunch. I'd certainly object to him
24 saying that's Gary Young or that's Thad or that's that. I
25 don't think -- if he gets up and says, well, that's Gary

1 Young or that's Mr. Reddick on the tape or that's Glenn
2 Hutchinson on the tape or that's Mike Mears on the tape,
3 that would certainly be improper, Judge. If he's talking
4 about with the Judge, the Court's direction that he can play
5 11:28 for fifteen seconds or whatever and not make any
6 comment or blurt out, hey, that's Gary or that's the way
7 Gary's clothes were, that would totally be improper. I
8 don't know whether he's trying to say he's just going to
9 play it, leave no comment, or what's he's saying he's
10 doing --

11 THE COURT: He could ask a witness, you know, whether
12 or not they think that particular individual depicted is
13 some specific person. Now, he can't testify himself.

14 MR. MEARS: And certainly that's -- Mr. Hardy knows
15 that that would be improper for anyone --

16 THE COURT: Gentlemen, let's quit, I almost say
17 bickering, but -- All right, sir.

18 Assuming for a moment that we allow you to play that
19 portion, again, are there any others? I'm not going -- Mr.
20 Mears, we're not just going to play the whole tape from
21 start to finish because --

22 MR. MEARS: Why not, Judge?

23 THE COURT: -- there may be something on there --

24 MR. MEARS: I know you've ruled, Judge, and I'm not
25 arguing. But I, for the life of me, I can't understand why?

1 THE COURT: I don't see the relevance.

2 MR. MEARS: Is it a time factor?

3 THE COURT: I don't see the relevance of it.

4 MR. MEARS: Judge, I, I can't articulate any other
5 stronger reason for playing it other than the fact that the
6 juror has a right -- You're going to charge them that they
7 have the right to look and make identification on some of
8 these matters. They have the right to use their common
9 sense. They have a right to look at this tape.

10 THE COURT: Without any other specifics being offered,
11 we'll allow you to play that portion which you have
12 specifically indicated to the Court that you would like to
13 play, that is eight minutes into the tape where an
14 individual comes in with a blue bandanna on. You can play
15 that portion of the tape.

16 MR. MEARS: That's not sufficient to just play that one
17 portion, Your Honor. It's less than ten seconds, that
18 particular part, because the individual is coming into the
19 store --

20 THE COURT: Mr. Mears, I have asked you to be specific.
21 Your only response is you want to play the entire tape.

22 MR. MEARS: My, my specific --

23 THE COURT: Now, if you will tell me another specific
24 segment and what it shows, we will consider it. Otherwise,
25 my ruling is going to stand. We're not going to play the

1 entire tape.

2 MR. MEARS: Will you allow me to play the part of the
3 tape from, from eight minutes into the tape to the end of
4 the tape?

5 THE COURT: No, sir.

6 MR. MEARS: Will the Court allow me to play the last
7 ten minutes of the tape? There were other individuals
8 coming into the store in the last ten minutes of the tape
9 that the jurors can make comparisons of.

10 THE COURT: Specifically, what do the individuals
11 depict that you wish to show the jury and you think is
12 relevant?

13 MR. MEARS: There were several individuals who come
14 into the store who appear to not make any purchases, go to
15 the door and look out, come back in. There are also in --
16 at one point, Your Honor, I believe there's --

17 THE COURT: All right. The fact that another
18 individual comes into the store, does not make a purchase,
19 what does that, you know, what does that prove or, or what
20 is that going to help this jury decide?

21 MR. MEARS: Your Honor, it shows individuals coming in
22 to determine when the clerk was going to be alone. It shows
23 individuals coming in, scouting the store on behalf of the
24 shooter who comes in later. Your Honor, there was one point
25 at 57.4, one of the -- I'm sorry. I'm using the numbers

1 that appeared on the screen at that point. Individuals, two
2 black males entered the store, one wearing a Nike T-shirt,
3 another wearing a Tasheki (ph.) type of shirt. They went to
4 the back of the store and were never seen leaving. I'd like
5 to show that part of the tape because that, the
6 configuration of that store, I'm going to ask Mr.
7 Hutchinson, the configuration of the store, it does have
8 places where you can be out of the area of the camera and be
9 out of the area of the clerk's view.

10 THE COURT: Mr. Mears, but there is no evidence that
11 anyone else, other than the one individual that came into
12 the store that is depicted on the video was involved in the
13 matter.

14 MR. MEARS: Judge, you, you let -- you, you made a
15 decision about not severing out the Madison Street Deli
16 based upon a similar transaction analysis between Madison
17 Street and Junior Food. Now, Junior Food has at least two,
18 maybe three individuals in the store, but we know that there
19 were two individuals in the store at the Junior Food Store.
20 The State's case puts two individuals in the store. One
21 going down one aisle and one going down the other aisle.
22 You let the Madison Street Deli into this case and not
23 severed it on the basis of the similarities between the two.
24 Now, the Court's saying because they're not similar, I can't
25 show the tape.

1 THE COURT: No, sir, that's not --

2 MR. MEARS: That doesn't make any sense, Judge.

3 THE COURT: That's not what I'm saying. Do you have
4 any other specifics?

5 MR. MEARS: No, Judge; I don't.

6 THE COURT: All right, sir. You can show that, that
7 one portion. Without any other proffers, you can show that
8 one portion eight minutes into the tape.

9 MR. MEARS: Your Honor, I, I don't want to show the one
10 portion and waive --

11 THE COURT: We're in recess.

12 MR. MEARS: -- I'm not arguing with you, Judge. I
13 don't want my showing of one portion to be considered a
14 waiver of my objections. Would the Court allow my objection
15 to stand and not having waived it by playing that one ten
16 second --

17 THE COURT: No, sir. No, sir. I've asked you for
18 specifics. You've not proffered any others.

19 MR. MEARS: Judge, all I'm asking you is if I play the
20 ten second portion, is that going to be a waiver of my
21 objection to not being allowed to show the whole tape?
22 Because I, I don't think --

23 THE COURT: Mr. Mears, I --

24 MR. MEARS: -- that one second is sufficient, or the
25 ten second portion --

1 THE COURT: That's been noted. We're in recess.

2 (Whereupon the Court takes a brief recess, and upon
3 reconvening the following transpired outside the
4 jury's presence)

5 MR. MEARS: Your Honor, where can Mr. Hutchinson be?
6 He can't see it from the witness stand. Could I ask him if
7 he could stand back over here with me while we --

8 THE COURT: Yes, sir.

9 MR. MEARS: Go ahead up there.

10 THE COURT: You may bring the jury in.

11 (Whereupon the jury returns to the courtroom,
12 after which the following transpired)

13 THE COURT: Mr. Mears, you may proceed.

14 MR. MEARS: Thank you, Your Honor.

15 Q Mr. Hutchinson, before we took the break, before we
16 took the break I had asked you whether or not you had had an
17 opportunity to view the surveillance tape in Mr. Griffin's office
18 and you said you had; is that correct?

19 A That's correct.

20 Q For the purpose of my next series of questions, I'm
21 going to ask if you will, to come down to this end of the jury
22 box with me while we play that portion of the tape that has been
23 designated here to be a very short portion. But if you will look
24 at that with me. Then I'll stop it and then I'll ask you to
25 return to the stand. Is that okay?

1 A (Witness steps down from witness stand)

2 MR. MEARS: Is that appropriate, Your Honor?

3 THE COURT: Yes, sir.

4 JUROR: Can I ask that this be moved over here?

5 THE COURT: Yes, sir.

6 Ladies and gentlemen, before we start it, we'll -- let
7 us know if some, if any of you can't see it sufficiently.

8 MR. MEARS: If we do it this way it may not be
9 necessary for Mr. Hutchinson --

10 JUROR: That's better. Thank you.

11 THE COURT: Can everyone see?

12 MR. MEARS: Mr. Hutchinson, can you see? Okay. Mr.
13 Hutchinson, if you could just stay there.

14 (Whereupon a portion of State's Exhibit 32 is played)

15 MR. MEARS: Your Honor, may I go ahead and move this
16 out of the way?

17 THE COURT: Yes, sir.

18 BY MR. MEARS:

19 Q Mr. Hutchinson, you had an opportunity to view that at
20 the crime scene at the Madison Street Deli on April the 7th; is
21 that correct?

22 A That's correct.

23 Q You have seen that part. When you began to process
24 that particular crime scene for fingerprints, did you use the
25 videotape as a means of identifying certain areas within the

1 store to attempt to collect prints?

2 A That's correct. I did.

3 Q Okay. Now, at that time you had been informed, had you
4 not, by the first officers that arrived on the scene and the EMS
5 people, as to who had been in the store subsequent to the time
6 that Mr. Wilson was shot? Had you not?

7 A I didn't understand your question.

8 Q Had you been told by the officers on the scene that a
9 type of crime scene log had been kept? You know what that is?

10 A Yes.

11 Q A crime scene log is a record of who has come onto the
12 scene, where they've been, and the times that they've been there.
13 In this case a crime scene log was not taken. But did you
14 receive information from the officers as to the names of the
15 individuals who had come into the store after the shooting took
16 place?

17 A Yes; I did.

18 Q Okay. So you knew who those people were including the
19 two lay people, the two ladies who had come, encountered -- at
20 least one came into the store and was talking to the other at the
21 door after Mr. Wilson had tried to call 911? You had those names
22 too; didn't you?

23 A I don't remember those names; no, sir.

24 Q You weren't given those names?

25 A No, sir.

1 Q Okay. So absent those -- Did you know anything about
2 that?

3 A No, sir.

4 Q You weren't asked to check their prints, like on the
5 door or anything else?

6 A No, sir.

7 Q Okay. Absent those people, you were told who else had
8 been in the store after Mr. Wilson had been shot?

9 A The officers. I don't know the names of the EMT's who
10 had been there, but that EMT's had been there. I don't know
11 their names.

12 Q And you processed the scene for latent prints; is that
13 correct?

14 A That's correct.

15 Q Now, we use the term "Latent Print". Would you just
16 tell the ladies and gentlemen of the jury what that means? What,
17 what's the difference between a latent print and a known print?

18 A A latent print is the reproduction of the ridge detail,
19 the little lines in your fingers, palms and soles of your feet,
20 that are left on an object when it's touched by someone.

21 Q And as a crime scene technician and as a collector of
22 fingerprints, that's what you actually collect when you go to a
23 crime scene and try to locate identifiable prints; is that
24 correct?

25 A That is correct.

1 Q Now, in this particular instance, the one at the
2 Madison Street Deli, you looked at the crime scene. Could you
3 make a determination as to those possible areas within the store
4 that the, Mr. Wilson's assailant had touched while he was in the
5 store, assuming it was a he?

6 A I could see some of the areas, yes, on the tape.

7 Q Okay. Would it be a fair statement to say that it
8 appeared that he touched the door on his way out?

9 A I really can't see it going out. I see him coming in,
10 opening the door, touched the door obviously coming in.

11 Q Did you see in the film as he was going out, his left
12 hand extend toward the door?

13 A I did not notice that in the film; no, sir.

14 Q You didn't see that in that film?

15 A No, sir.

16 Q How many times did you watch the film?

17 A I think I viewed it twice.

18 Q Okay. And as you watched it just then did you see the
19 gentleman, or am I just missing that completely, where he was
20 going out the door like this?

21 A I missed -- I obviously missed that. I didn't see
22 that.

23 Q And, and I'm not saying that he did it. I'm just
24 saying that there was -- I'm asking the question, did you see him
25 do that?

1 A No, sir.

2 Q What I say is not evidence. Okay? Did you see him as
3 he, or she, came back around the corner and started touching the
4 cash register?

5 A Yes; I did.

6 Q Okay. Did you stop the videotape at any time as you
7 were watching it in Mr. Griffin's office so that you could
8 better, get a better or clearer picture of those parts of the
9 cash register that he touched?

10 A I don't recall us stopping the tape at the store. I
11 don't recall us doing that.

12 Q Okay. Do you recall that portion of the tape where it
13 appears that the individual went, left the tape, and I'll turn my
14 back on you, like this is the cash register, left the cash
15 register, went back around and either said or yelled something
16 over toward where Mr. Wilson apparently was? Did you see that
17 portion?

18 A Yes, sir.

19 Q Did you see his left hand on the other machine, the
20 cash register or the lottery machine there?

21 A It appears it's at the end of the counter. I don't
22 know if it's one --

23 Q Did you see the machine sitting there?

24 A Yes. There is a machine there on the end of the
25 counter.

1 Q When you attempted to locate latent prints at the
2 Madison Street Deli, what areas did you first secure and then
3 attempt to locate prints by the application of proper chemicals
4 or dust?

5 A The store was secured already when I got there. There
6 was -- they had up barrier tape. I started processing with the
7 cash register that you see the individual appears to be punching
8 the keys of. I started with that cash register and worked myself
9 back around to the front door.

10 Q What -- You started with that. Did you ascertain, or
11 did you ask any questions as to whether or not anyone on the
12 scene before you had touched the cash register?

13 A Yes; I did.

14 Q And what were you told?

15 A I was told by the officers that no one had.

16 Q Okay. You were told that no one had touched the cash
17 register?

18 A The cash register itself; yes, sir.

19 Q Okay. Now, when I asked the question, did you secure
20 it, I guess my question is, the crime scene had been secured.
21 Did you do any internal securing method, or use any internal
22 securing methods over those areas that you had decided you were
23 going to take latent, or attempt to find latent prints from?

24 A I did. I advised the officers that, not to touch
25 anything until I had processed it for fingerprints.

1 Q And that's good crime scene detective --

2 A Normal procedure.

3 Q Normal procedure. Now, when you finished processing
4 the cash register, what was the next thing that you processed, or
5 attempted to process?

6 A The counter next to the cash register. And I processed
7 the end of the counter where the lotto machine appears to be, or
8 there's some type -- may be another cash register there, some
9 type of machine on that end of the counter. I processed the
10 entrance to the back of these counters. There's a two, two and a
11 half foot little entrance between the counter and the wall of the
12 store. I processed the area in, along the front of that counter
13 which faces out into the store. And then I was at the front door
14 and processed both the inside and the outside of the front doors,
15 both doors.

16 Q Okay. Now, did you ever process the machine, the lotto
17 machine, or what we're calling the lotto machine at the end of
18 the counter?

19 A I don't recall processing the whole, the whole machine.
20 Just the end of the counter where it was sitting.

21 Q Okay. But you did attempt to retrieve prints from the
22 inside of the door; is that correct?

23 A That's correct.

24 Q At what height level were you attempting to retrieve
25 those?

1 A I processed it as high as I could reach. I'm five
2 nine. Probably six three, something like that, that height, as
3 far as I could reach, or where a person would normally handle the
4 door when they come in.

5 Q That, that was my question. You processed that area
6 where someone would normally push against the door?

7 A Yes, sir.

8 Q Okay. Now, did you obtain any usable latent prints?
9 And you know what I mean by the term "usable", within the context
10 of your profession?

11 A I did not lift any identifiable or usable prints.

12 Q How many lifts did you take at the Madison Street Deli?

13 A I don't remember the exact number. About seven or
14 eight to the best of my knowledge.

15 Q Seven or eight. Would that be the most that you would
16 have lifted?

17 A Yes, sir.

18 Q Now, when I use the term "Lifted", let me explain it.
19 I'm assuming by using that term that these are prints that you
20 had dusted or surfaces that you had dusted with some form of
21 chemical, that you had then placed some type of tape, fingerprint
22 tape of some type on and lifted after you had photographed it?

23 A That's correct.

24 Q Did you photograph any of these before you lifted them?

25 A No; I did not.

1 Q Okay. So you put tape on and lifted seven or eight
2 prints?

3 A Yes. Partial fingerprints.

4 Q Partial prints. Now, and your testimony is, none of
5 those were usable; is that correct?

6 A That's correct.

7 Q Did you ever attempt to, to compare any of those
8 partial prints to any known prints?

9 A No, sir; I did not. There was not enough ridge detail
10 to compare. They were not of any evidentiary value to me.

11 Q To you. Did you make any attempt at all to obtain the
12 prints of the other individuals who had been in the store to see
13 if you could make even partial identifications?

14 A No, sir; I did not. There's, there's not enough ridge
15 detail. There was no need for me to compare them. There was
16 nothing to compare to.

17 Q Okay. And you've testified that you use anywhere from
18 eight to twelve, eight to twelve points of identification in
19 order to make an assessment as to whether or not there's a
20 comparison; is that correct?

21 A That's correct.

22 Q Have you ever made any points of comparison using less
23 than eight individual points of identification?

24 A No, sir; I have not.

25 Q Have you ever attempted to make identification

1 comparisons using less than eight points?

2 A No, sir.

3 Q Okay. Are you aware that such identifications can be
4 attempted? In other words, you, you've identified the
5 bifurcated, the islands, the ridges, those type of things, and
6 you've indicated at least in one print that you, that you did
7 make a comparison of, that you found -- you, you charted ten and
8 you said you found fifteen?

9 A That's correct.

10 Q Now, you didn't even attempt to make any comparisons at
11 the Madison Street Deli; did you?

12 A No, sir.

13 Q Okay. What did you do with those partial prints after
14 you finished with them?

15 A I just, I threw them away. They were of no value to
16 me. No evidence.

17 Q When did you throw them away?

18 A That night.

19 Q So, without saving those prints or even those partial
20 prints or having the F. B. I. or anyone else look at them, you
21 threw them away?

22 A Yes, sir.

23 Q Is that a standard practice, to throw away even partial
24 prints?

25 A Yes, sir. If they're not of any value to us, then we,

1 we don't keep it. It's like any other item. If we can't use it,
2 it's not of any value to us. I'm not going to use it.

3 Q Did you ask for a second opinion on any of those
4 partial prints?

5 A No, sir; not that night. There was nobody to ask.

6 Q Did you -- Did it occur to you to -- and I'm not
7 questioning your decision to throw them away except that I need
8 to know did you even consider having someone else look at the
9 prints to see if you might have been mistaken?

10 A No, sir; I did not. I, I knew that they were not
11 identifiable.

12 Q Have you ever made a mistake?

13 A In some things; yes, sir.

14 Q But we do know that there's no way to check your work
15 with regard to the prints at the Madison Street Deli because you
16 threw it away that night; didn't you?

17 A That's correct.

18 Q Seven or eight lifts you threw away?

19 A Yes, sir.

20 Q Is it the procedure of -- Is it your procedure to
21 discard prints before there are even suspects available to
22 attempt partial identification from?

23 A If the print does not contain enough identifying
24 characteristics, there's no -- I do not keep it. It's not
25 identifiable.

1 Q Mr. Hutchinson, do you understand the term "Minutia"
2 with regard to partial prints?

3 A Yes.

4 Q Minutia are those things that include scars, marks,
5 things of that nature that are not part of those fingerprint
6 classifications, but they can be used to make identifications; is
7 that correct?

8 A My understanding of minutia is that it is the
9 identifying characteristics.

10 Q But there are external identifying characteristics that
11 can be used such as scars, such as abnormalities of skin, things
12 of that nature; are there not?

13 A Scars do help you know maybe what finger to go to, to
14 look at on a fingerprint card. But a scar is -- there are no
15 identifying characteristics actually in the scar to use. But,
16 yes, a scar will help you determine where on the fingerprint card
17 you need to start looking at.

18 Q And it would also identify particular fingerprint cards
19 to look at; wouldn't it?

20 A That's true.

21 Q Under the, under the A.F.I.S. system. You've
22 mentioned the automatic fingerprint identification system, which
23 is this new super computer system they've got. You didn't use
24 that that night; did you?

25 A No; I did not.

1 Q Did you make any attempt to use that that night?

2 A No, sir. The prints are not, were not identifiable.

3 There was no need to enter them in the A.F.I.S. Some of them
4 were partial palmprints. And A.F.I.S. does not search
5 palmprints. It has no data base for that.

6 Q In fact, A.F.I.S. is very particular about the type of
7 prints that they use; isn't that correct?

8 A It has to be a very good print most of the time for
9 A.F.I.S. to --

10 Q You have to roll it just the right way, you have to
11 hold it down in front just the right way, and all of that; don't
12 you?

13 A Well, it has to have good identifying characteristics
14 within the pattern.

15 Q Now, what number do you use as a guideline to determine
16 when you've lifted enough prints or partial prints from a scene
17 that you decide your work is done at that particular location?

18 A What -- I, I didn't understand the question.

19 Q Is there a number? You've indicated that there,
20 obviously there's numbers that you use as a, as a reference point
21 for identifying characteristics and making comparisons. Is there
22 a number that's used by members of your profession to determine
23 when you've adequately covered a crime scene area to make sure
24 that you've made all the good faith efforts necessary to locate
25 identifiable prints?

1 A There's no certain number. I would normally lift all
2 the prints that I developed in the likely areas that the
3 perpetrator may have handled. There is no certain number though.

4 Q It's a subjective decision on your part?

5 A Yes.

6 Q Is it unusual to have a videotape to get, guide you to
7 particular locations within a store, or a location to take a,
8 take fingerprints?

9 A It is. I don't have that very often.

10 Q It's very helpful; isn't it?

11 A It is.

12 Q Because it allows you to not waste your time on other
13 areas of the location in sort of a fishing expedition for
14 fingerprints; doesn't it?

15 A In some ways; yes, sir.

16 Q And in this particular case you had some specific
17 points of reference that you could focus on in attempting to lift
18 latent, or to identify latent fingerprints; is that correct?

19 A That's correct. And a specific time or a pretty close
20 time that the perpetrator was in the store.

21 Q How, how long were you in the store that night
22 attempting to lift prints?

23 A I was there probably about an hour and a half to the
24 best of my recollection.

25 Q How much of that time was spent trying to identify and

1 lift fingerprints?

2 A Oh, probably half of it.

3 Q Forty-five minutes?

4 A That's right.

5 Q Okay. Now, during the forty-five minutes that you were
6 in the store, how much time did you spend trying to lift prints
7 from the cash register?

8 A I don't know really how long it took me.

9 Q And, Mr. Hutchinson, I'm not asking you for specifics.
10 Just estimates. I know I'm asking you to go back several years.

11 A Probably no more than five minutes or so. It doesn't
12 take very long to, to apply fingerprint powder to an object and
13 to see a developed fingerprint.

14 Q So, you spent five minutes on the cash register. And
15 you did a portion of the counter around where the lottery, for
16 sake of our discussion, a lottery machine was located?

17 A Right.

18 Q But you didn't do the lottery machine itself?

19 A No.

20 Q Did you do anything back around the kitchen, around the
21 sink area, the poles around the sink area, or the dish rack
22 itself?

23 A I didn't do the sink or the, that area immediately
24 around it. It was wet with water. There was no way I could
25 apply fingerprint powder to the moisture.

1 Q Okay. How much time did you spend on the inside of the
2 door?

3 A Probably took me about ten, twelve minutes.

4 Q Inside, inside of glass doors is good territory for
5 fingerprints; would you agree?

6 A Most of the time; yes.

7 Q You've got a smooth surface. It's usually non porous.
8 Usually the oil secretions from hands and other chemicals from
9 hands that hit that are going to be preserved or are going to
10 remain there for a long time. Is that a fair statement?

11 A They can if you touch that glass. And on those doors
12 there was a handle in front of them. So a lot of times you
13 didn't touch the glass. You touched the handle before you got to
14 the glass. They were exceptionally clean doors. You don't
15 normally have one that clean. I don't know if it had been
16 cleaned or which -- when the last time it was cleaned, but it was
17 exceptionally clean.

18 Q So you spent five or ten minutes on the inside of the
19 door; is that correct?

20 A About ten minutes; yes.

21 Q Ten minutes. Did you do the, the handle at all?

22 A Yes; I did.

23 Q Okay. And you did the glass portion above the handle?

24 A Right.

25 Q Okay. And then the outside of the door, did you

1 attempt to lift any prints from the outside of the door?

2 A Yes; I did.

3 Q Okay. How many partials did you recover from the --
4 I'll walk back in now. How many partials did you recover from
5 the outside of the door?

6 A I believe I only recovered three from the, from the
7 outside of the door.

8 Q How many from the inside of the door?

9 A There was just a couple from the inside of the door to
10 the best of my recollection.

11 Q Only a couple of prints from the inside. Were they on
12 the handle or the glass?

13 A They were on the glass.

14 Q Okay. How many did you recover from the counter around
15 the lottery machine?

16 A I didn't recover any.

17 Q How many did you recover from the cash register?

18 A I recovered one from the keys of the cash register.

19 Q Just one?

20 A Just one.

21 Q And that's your total of seven or eight?

22 A Approximately seven or eight to the best of my
23 recollection. I can't -- Like I say, I can't remember the exact
24 number that I lifted.

25 Q Do you have any records in your file to show the

1 location of these partial prints that you've just talked about?

2 Do you keep a record of them?

3 A No, sir.

4 Q Did you throw that away with the prints themselves?

5 A I, I didn't put down anything as to where I lifted
6 them. I don't, I don't recall that.

7 Q Well, just look, briefly if you'll just look through
8 your file and see if you even kept that record?

9 A Yes, sir. From the cash register and the front door.

10 Q Okay. So, I believe you said five minutes at the cash
11 register; is that correct?

12 A Approximately five minutes. Could have been less than
13 that. It doesn't take very long.

14 Q Ten minutes at the door. And the outside how long?

15 A Probably another ten, twelve minutes out there.

16 Q So we're talking about twenty, twenty-five minutes.
17 Would that be a fair statement? Well, wait. I forgot about the
18 lottery machine. How much, how much time there?

19 A A couple of minutes. And there's the counter along the
20 front of the deli, the deli counter itself, another ten minutes
21 or so.

22 Q Okay. Now, you had viewed the, at least you'd viewed
23 part of that videotape and did you see any time the person who is
24 alleged to have shot Mr., or the person who shot Mr. Wilson in
25 that video, did you ever see him or her touch the counter top?

1 A I don't recall seeing them touch the counter top.

2 Q Then what would have been the purpose of spending time
3 taking prints from the counter top?

4 A Well, I'm not -- you're not really able to see the
5 whole length of the counter in front of the deli. Knowing that
6 you have to run along in front of that counter, or walk along in
7 front of that counter, there may, there may be a chance that a
8 person handled that counter, specifically the end of it where you
9 turn to go behind the counter. As I say, the opening is about
10 two and a half feet, about the width of this petition here. And
11 you may have had to put your hand out. That's the reason I
12 processed those areas.

13 Q Okay. Now, you indicated that there was a .25 caliber
14 cartridge casing that was turned over to you, or at least you had
15 come into contact with at the scene; is that correct?

16 A That's correct.

17 Q Now, in your experience, have you ever been able to
18 lift latent prints from cartridge casings?

19 A In my experience it's very seldom that you ever lift a
20 latent print from a cartridge. Some of the bigger cartridge
21 cases, some of the large ones, there have been instances where I
22 have lifted a partial latent fingerprint. I don't remember ever
23 lifting an identifiable one.

24 Q The number of points of comparisons that you are able
25 to make on any particular latent print is not dependent upon the

1 size of the print though; is it, entirely?

2 A Not entirely; no.

3 Q You have have fifteen prints within a very small
4 portion of a fingerprint; can't you?

5 A That's possible; yes.

6 Q I mean, you can find sufficient ridges. You found at
7 least, as you talked about, you found at least ten ridge points
8 of comparison. You didn't find any other, the bifurcated or
9 trifurcated or islands or any of those. You only found ridges;
10 is that correct?

11 A There's ridge endings. There are, there is a -- Yeah.
12 All -- I'm sorry. All ridge endings; yes.

13 Q Right. And that's all you talked about here. But
14 that's not depending upon -- the number that you find is not
15 dependent upon the size of the print; is it?

16 A Not always; no.

17 Q So it is possible to recover, and technicians do
18 recover prints even from small .25 caliber shell casings; don't
19 they?

20 A I'm sure they do. I, I don't know of any instances
21 where there have been some developed from a .25.

22 Q Because whoever puts the shell casing in the chamber or
23 in the magazine generally uses their fingers to do that. Would
24 that be a fair assessment?

25 A Most of the time; yes.

1 Q Okay. Do you know whether or not there were any
2 procedures in place to safeguard the prints that might have been
3 on the .25 caliber shell found at the Madison Street Deli or not?

4 A It was placed in that container, metal container by me.
5 I handled it end to end as I picked it up and transported it to
6 the crime lab to Jim Howard at the crime lab. I don't normally
7 process an item that's going to the crime lab to be checked for
8 some other firearms verification or whatever. But I did not
9 check it.

10 Q Okay. Let me move on to the Junior Food Store. You
11 had indicated that you processed some fingerprints -- You, you
12 didn't go to the Junior Food Store; is that correct?

13 A No, sir; I was not at the scene.

14 Q So you did not actually locate, identify and lift
15 latent prints at the Junior Food Store; is that correct?

16 A That's correct.

17 Q How many finger, latent fingerprints were you given to
18 observe and to attempt to make comparisons from, from the Junior
19 Food Store?

20 A There were twelve latent fingerprint cards, backing
21 cards.

22 Q Okay. How many of those latent prints were lifts of
23 value?

24 A There were, I believe, about five that are
25 identifiable.

1 Q You didn't find nine prints of value?

2 A No, sir. There were five latent lifts that are of
3 value. Five cards is what I'm saying that are of value.

4 Q But I'm saying, you didn't find nine lifts of value?

5 A In those, yes; there are nine points of identification
6 in those --

7 Q I'm sorry. I'm talking about the print itself now, not
8 the individual comparisons within the ones that you made
9 comparisons of. How many prints were given to you from the
10 Junior Food Store that had value for identification purposes?

11 A I'd have to look at the cards to see.

12 Q Mr. Hutchinson, I'm handing you what's been marked as
13 State's Exhibit 165. Are those the twelve prints of value that,
14 or the twelve prints that you had?

15 A Those are the twelve latent three by five backing
16 cards.

17 Q Out of those twelve, how many had value for
18 identification purposes according to your estimation?

19 A There were five cards that -- one card contained two
20 fingerprints. And both of those were identifiable. So there was
21 actually six fingerprints or palm, partial palmprints that were
22 identifiable.

23 Q Now, where were those -- I, I know you didn't do it.
24 But the card identifies the location where the lifts were made;
25 does it not?

1 A Yes; it does. On the back there's a diagram.

2 Q Okay. Just, just to those six that you determined were
3 of value, where were they located?

4 A One was located on the front door frame, left side,
5 outside, approximately four foot from ground level, from the
6 floor.

7 Q Okay.

8 A One was located from the cash register, upper right
9 corner. One was located from the inside front door frame. Two
10 were located from the front door, outside door glass. And one
11 from the front door, inside door glass.

12 Q Now, of those six prints that you determined were
13 usable, or had value for identification purposes, from within the
14 store, what comparisons did you make, or to what did you make
15 comparisons of those six?

16 A I compared those partial prints to Ray Cromartie's
17 known fingerprints, Corey Clark's, Thaddeus Lucas and Gary Young.
18 Also the victim --

19 Q Mr. Slysz?

20 A -- post mortem -- Right.

21 Q Now, did you make any comparisons at all of those six
22 prints with any known prints? I mean, excuse me. Did, did you
23 identify any of those six as having characteristics of those
24 known prints?

25 A No, sir; I did not.

1 Q You did not find sufficient points of similarity in
2 which for you to make a decision that they were the prints of
3 those four people you identified; is that correct?

4 A That's correct.

5 Q Would it be a fair statement that you found no
6 fingerprint, latent print that matched Ray Jefferson Cromartie's
7 inside the store?

8 A That's correct.

9 Q Okay. Now, were there any prints, latent prints given
10 to you from the beer section of the, of the store?

11 A No, sir. I don't see any here that indicate that.

12 Q What about the partial, or those six that you said did
13 not have value for identification purposes, where were they from?

14 A Inside the front door glass, front door glass inside.
15 Cash register, right side. Front door glass, outside. Outside
16 glass of the front door. Front door glass, outside, on the frame
17 of the door. And the last one is from the keys of the cash
18 register.

19 Q What about the .25 caliber cartridge case or shell
20 casings that were found inside the store? Is there any cards
21 indicating that attempts were made to lift prints from those two
22 .25 caliber cartridge casings?

23 A No, sir.

24 Q Now, as I understand your testimony, then you made,
25 even with those prints that had value that you could use for

1 identification, you weren't able to make any, any matches? You
2 weren't able to identify them as belonging to anyone; is that
3 correct?

4 A That's correct.

5 Q Or at least anyone that you had prints to compare to?

6 A That's correct.

7 Q Okay. Now, you were given a portion of a cardboard
8 beer container to make a comparison with; is that correct?

9 A That's correct.

10 Q Now, again, you did not identify or lift that
11 particular print from the Budweiser beer carton; is that correct?

12 A I did lift that print.

13 Q You did that one?

14 A I developed it and lifted it; yes.

15 Q In other words, there was nothing done at the scene to
16 indicate, or to attempt to lift prints from this?

17 A None whatsoever that I know of.

18 Q Okay. Were you given any indication, either in writing
19 or orally, as to the manner of preservation of this particular
20 item before it was given to you?

21 A No, sir; only that it was collected from the scene.

22 Q Okay. And you lifted the print, I believe you said,
23 from the outside?

24 A Yes, sir. From the shiny -- the red side there.

25 Q What type of chemical did you use?

1 A I used super glue.

2 Q I'm sorry. I think you said that. Is that a
3 cyclanitate (ph.) or something like that?

4 A Crynolacrylic (ph.).

5 Q That's right. And is there a better way to do it,
6 using cardboard?

7 A No, sir. That's, to me that's the best way. That is
8 one of the most common ways used to lift from a, what's called a
9 wax surface or shiny surface, a non porous surface. The outside
10 of that, the red side of that carton is a non porous wax surface
11 and that's the procedure that we're taught to process it with.

12 Q Did you find any partials in addition to the one that
13 you used for a comparison?

14 A There is a partial just above the original lift. It
15 appears to be where the finger has moved.

16 Q In what proximity was that partial to the one that you
17 found?

18 A Very close. Just -- they're almost together.

19 Q Almost overlaid?

20 A Well, not overlaid, but very close.

21 Q Very closely?

22 A But above. Not side by side.

23 Q Okay. Is there any way to determine when a print is
24 placed on a particular surface?

25 A You're asking for a specific time or date, no, sir; I

1 cannot do that.

2 Q Obviously, I'm asking as someone who does this, done it
3 for nineteen years now, have you ever been able to pinpoint the
4 time using just the fingerprint on a surface?

5 A No, sir.

6 Q Depending upon where the surface has been, how long
7 it's been there, its exposure to elements, things of that nature,
8 all of those factors may make it come or go, but you can't tell
9 how long it's been there; can you?

10 A That's correct.

11 Q Okay. Once a print is put on a surface like that, and
12 there's no other exposure of that surface to elements, water,
13 dust, other prints, how long can it last?

14 A There's no, no way I can tell you a specific length of
15 time. It all depends, as you said, on the conditions that it's
16 exposed to. I can't tell you that it'll be there a week, two
17 weeks or -- there's no way for me to know how long that it will
18 be there.

19 Q There's just no way of knowing whether it's been there
20 two days, three days or a week; is there?

21 A That's correct.

22 Q Okay. Now, when you make fingerprint comparisons and
23 you were asked, and you've been doing this a long time, and I
24 believe you said that you are absolutely sure; is that right?

25 A Yes, sir.

1 Q Were you absolutely sure, absolutely sure that none of
2 the prints you found at the Madison Street Deli could have been
3 used for identification purposes by a, a fingerprint examiner?

4 A Yes, sir.

5 Q You're absolutely sure?

6 A Yes, sir.

7 Q You never make a mistake about that?

8 A No, sir; never have.

9 Q And you've never made a mistake in your life as a
10 fingerprint examiner?

11 A I've never made a mistake; no, sir.

12 Q In nineteen years?

13 A Not in an identification; no, sir.

14 Q Okay. Mr. Hutchinson, in nineteen years, how many
15 times have you had other fingerprint examiners come to court and
16 challenge your work?

17 A I can only recall two times.

18 Q And those two times you were right; weren't you?

19 A Yes, sir; I was.

20 Q And all of the other times no one's challenged you;
21 have they?

22 A No, sir.

23 Q Because you've never been wrong?

24 A I've never been wrong in an identification.

25 Q Because, isn't it true, Mr. Hutchinson, that when you

1 look at a fingerprint, you go through whatever the fingerprint
2 is, you determine whether or not number nine is the same as
3 number nine here; don't you?

4 A Yes, sir.

5 Q You use a micro -- Do you use a microscope to do that?

6 A I use a magnifying glass; yes, sir.

7 Q And when you look down here at number four, excuse me,
8 when you look down here at number four, you determine whether or
9 not number four matches number four over here; don't you?

10 A Yes, sir.

11 Q You look at that with your eyesight?

12 A Yes, sir.

13 Q And you've never made a mistake?

14 A Never on identification; no, sir.

15 MR. MEARS: Okay. Nothing further.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. HARDY:

18 Q Do you check with other people on occasions, get other
19 advice?

20 A Yes; I do.

21 Q Do you do that all the time?

22 A Not all the time, but frequently; yes.

23 Q You've made other mistakes, I think?

24 A Yes, sir; I have.

25 Q As to the -- When it gets down to the good, clear

1 print --

2 MR. MEARS: Objection. Leading question. He still has
3 him on direct, Judge.

4 THE COURT: I'm not sure that I've heard enough to make
5 a ruling on that. What is -- State your question. Let him
6 state it before --

7 BY MR. HARDY:

8 Q When you have an identifiable print and something to
9 compare it with, do you take your instruments and then make a
10 comparison?

11 A Yes, sir.

12 Q Then do you consult with other people if need be?

13 A Right.

14 Q That's when you're saying when you have the
15 identifiable prints, something to work with, you've not made a
16 mistake in that area?

17 A I've never made a misidentification.

18 Q You're real cautious about getting those at least --

19 MR. MEARS: Objection, Your Honor. That calls for
20 bolstering the witness and it's also leading.

21 THE COURT: Sustained as to leading.

22 BY MR. HARDY:

23 Q You need how many points of comparison before you'll
24 say one way or the other?

25 A Nine.

1 Q That's more than other people?

2 MR. MEARS: Objection --

3 A It all depends on --

4 MR. MEARS: Objection. Objection, Your Honor. There's
5 been no foundation laid as to his comparative values with
6 other fingerprint identifiers. If they're going to put in
7 what other fingerprint identifiers use, that'd be one thing.
8 But to just ask it like that without a foundation, I would
9 object.

10 THE COURT: Mr. Hardy?

11 MR. HARDY: I'll rephrase it.

12 Q You will not make a call until you have how many
13 points?

14 A Nine points.

15 Q This one right here, Number 166, how many points of
16 comparison between the two did you find?

17 A There were fifteen. I charted ten.

18 FURTHER RECROSS EXAMINATION

19 BY MR. MEARS:

20 Q Mr. Hardy asked you if you ever called for help, or
21 asked for help. Did you ask for any help on those prints at the
22 Madison Street Deli before you threw them away?

23 A No, sir; I did not.

24 Q And that wasn't a mistake; was it?

25 A I don't think so.

1 MR. MEARS: Nothing further.

2 THE COURT: May this witness be excused?

3 MR. HARDY: Yes, sir. We know where he can be on call,
4 Your Honor.

5 THE COURT: You are excused.

6 Let me see Counsel for just a moment.

7 (Whereupon Counsel confer with the Court at the Bench,
8 during which the following transpired)

9 THE COURT: How long is the next witness going to be?

10 MR. HARDY: I think I might rest, Judge.

11 THE COURT: We need to go over your exhibits, I guess,
12 before you do. You had asked me yesterday about whether or
13 not everything that had been on the table was in.

14 MR. HARDY: I think we have. Just to make sure.

15 THE COURT: All right.

16 MR. MEARS: I think we might ought to go back and frisk
17 some of the witnesses to make sure.

18 THE COURT: But you're going to rest. You're going to
19 have a motion?

20 MR. MEARS: Yes, Your Honor. Can we do that after
21 lunch if he's going to go through his stuff before he rests?

22 THE COURT: I'm going to send the jury out for a longer
23 lunch hour today and we'll go ahead over his list. I would
24 think you're prepared to make the motion at this time.

25 MR. MEARS: We're prepared; yes, sir. I mean, you've

1 heard the evidence. I'll make the motion and not prolong
2 it. I'm sure it's going to be granted so I'll just go ahead
3 and make it.

4 THE COURT: Yes, sir. That's why I'm letting the jury
5 go to lunch at this time till 1:15.

6 (Conclusion of Bench conference)

7 THE COURT: Ladies and gentlemen, it appears that I
8 have a couple of matters to take up outside of your
9 presence. I anticipate those matters taking fifteen, twenty
10 or thirty minutes. So at this time we're going to recess
11 for lunch.

12 Let me ask that you return to your jury room by 1:15.
13 I'll give you a little longer lunch period today. And
14 hopefully we can resume this matter promptly at 1:15. Thank
15 you.

16 (Whereupon the jury retires from the courtroom, after
17 which the following transpired)

18 THE COURT: All right, gentlemen, it's my understanding
19 that the State wants to inquire as to what exhibits have, in
20 fact, been admitted at this time. Is that correct?

21 MR. HARDY: Yes, sir.

22 THE COURT: Mr. Hardy, do you have a, a chronological
23 list? When I say chronological, I don't mean numerically,
24 but --

25 MR. HARDY: I've got one numbered 1 through -- Yes,

1 sir.

2 THE COURT: Yours is numbered 1 through 176 or 180
3 something?

4 MR. HARDY: Yes, sir.

5 MR. MEARS: Your Honor, while he's doing that can we go
6 ahead and separate out those that have been identified as
7 Defense exhibits so that it might help speed it along. Can
8 we go ahead and be doing that while he's doing --

9 THE COURT: That's fine.

10 MR. MEARS: I just didn't want to get in Mr. Hardy's
11 way.

12 MR. HARDY: Number 1 -- Excuse me. How would the Court
13 like to do it?

14 THE COURT: Whichever way is going to be the most
15 expedient.

16 MR. HARDY: Do you want me to xerox this for the Court
17 right quick?

18 THE COURT: No, sir; I don't think that's going to be
19 necessary. I think we can just run down the list real
20 quickly.

21 MR. HARDY: Number 1 is --

22 THE COURT: I'm sorry.

23 MR. HARDY: Excuse me. Do you want me to say it or you
24 to say it, however the Court wants to do it?

25 THE COURT: You're going to do them in the order that

1 you have them listed as opposed to the order they were
2 tendered?

3 MR. HARDY: That's, that's the way I have it, Judge.
4 I'm sorry. I think we've already offered everything that's
5 up here. But if you want us to go 1, start with the Number
6 1 and run through it, however the Court would like to do it.

7 THE COURT: Well, I just want to be satisfied that
8 nothing, nothing goes out with the jury that either has not
9 been admitted or would not otherwise go out. Of course,
10 we're to the second point of that at this time. You simply
11 want to make sure that everything is in evidence prior to
12 resting.

13 MR. HARDY: I think there was a question about the
14 fingerprint card, Your Honor. We need to get the Clerk to
15 redact that.

16 THE COURT: It was 15 -- Yes, sir.

17 MR. HARDY: Which is 163, Your Honor.

18 MR. MEARS: Your Honor, could I ask -- I know that the
19 jury will probably attempt to make their own fingerprint
20 comparisons using it. There -- I'm not sure it can be
21 redacted in its present form without perhaps making a copy.
22 This is, so the record will reflect, Your Honor, State's
23 Exhibit 163 is a fingerprint card that was fingerprints
24 taken of Mr. Cromartie when he was arrested in 1990 for a
25 DUI. And there are -- it's dated 1990, but it doesn't show

1 any disposition of the case that I can tell or anything like
2 that. But I think it would be inappropriate for the card to
3 go out in its present form. Redacting it is going to be
4 difficult because of the dates on the back. I think by
5 redacting it, whitening it out or anything like that is
6 certainly going to call attention to it.

7 THE COURT: Let's see the card again, Mr. Mears. I
8 only recall one specific portion that appeared to need to
9 me --

10 MR. MEARS: DUI here.

11 THE COURT: Yes, sir.

12 MR. MEARS: And the fact that it's dated in the back,
13 11-20-90.

14 THE COURT: Well, there's also on the front, it's also
15 dated.

16 Any response, Mr. Hardy?

17 MR. HARDY: I think he'd have a right to get the dates
18 and the DUI off of it, Judge.

19 THE COURT: Well, yes, sir; I agree with that. Any
20 response in regards to how you would propose to do that?

21 MR. HARDY: Take some white and white it out if you
22 want to.

23 MR. MEARS: You've got this one. Why don't you just
24 use that?

25 THE COURT: All right, sir.

1 MR. HARDY: If the Court doesn't mind, they can take a
2 copy, white it, xerox it, and the Clerk can have it and you
3 can just white it out.

4 THE COURT: Well, my question is whether or not you'll
5 be satisfied putting in a xerox copy, or whether or not you
6 wish to otherwise cover up this material and actually send
7 this out.

8 MR. HARDY: However the Court thinks it'd be best, Your
9 Honor. I don't --

10 THE COURT: All right, sir. If we can find some type
11 of satisfactory tape -- white out -- well, I could charge
12 the jury not to scratch the white out off, but I'd really be
13 concerned if they did that. I think it might be better just
14 to make a, make a xerox copy of it and white out or cover up
15 these two, three portions on the xerox copy and --

16 CLERK: Do you want front and back?

17 THE COURT: -- then copy it again.

18 Do you want it front and back, Mr. Hardy?

19 MR. HARDY: If he can just do the front for us, Judge.

20 THE COURT: All right. Just the front in the two
21 spots, or three spots, gentlemen. We've got this date here.
22 Okay? 11-21-90, or, yeah, 11-21-90. This information here.
23 This date right here.

24 CLERK: What about that last number right there? What
25 does that number indicate?

1 THE COURT: I don't have the foggiest idea of that
2 number. I don't see anything else on there. Do you
3 gentlemen?

4 MR. MEARS: It almost -- they'll never know it was a
5 DUI, because they're going to think it was murder now.

6 THE COURT: All right. Mr. Hardy, why don't we just
7 use your list? If you'll run down the list, please, sir?

8 MR. HARDY: If we could first just get to the rights
9 since the Clerk may have to redact, so he can do that,
10 Judge. We've got the pictures. These pictures, Mr. Mears.

11 MR. MEARS: Yes, sir. I'm sorry.

12 MR. HARDY: You had cut off the bottom part of Mr.
13 Cromartie's picture.

14 MR. MEARS: Cut off the bottom --

15 MR. HARDY: Cut off the bottom of each of these other
16 ones.

17 MR. MEARS: I have, I have no objection to that, Your
18 Honor. It's the book-in information. And I did it to Mr.
19 Cromartie. I certainly don't have any objection to the
20 State doing it for the other witnesses.

21 THE COURT: All right, sir. What numbers are those so
22 that we can --

23 MR. HARDY: Your Honor, those are --

24 THE COURT: -- satisfy ourselves they're already in.

25 MR. HARDY: -- 170, 171, 172 and 173.

1 THE COURT: All right, sir.

2 CLERK: Cut off the bottom of them?

3 MR. HARDY: Just the part that has the writing on it,
4 yes.

5 There was a letter that Mr. Clark wrote. Any objection
6 to that going out? I'm just trying to get the written
7 documents.

8 THE COURT: What number is that, Mr. Mitchell?

9 MR. MITCHELL: It's Defendant's 16.

10 MR. MEARS: It's Defendant's 16. You introduced the --

11 MR. HARDY: The original one.

12 MR. MEARS: -- the original, I believe.

13 CLERK: You've got a 16-A too. 16 and 16-A.

14 MR. MITCHELL: The original is 174, State's Exhibit
15 Number 174 is the original.

16 MR. HARDY: Mr. Mears, these appear to be copies of --

17 MR. MEARS: Those are the ones that were being handed
18 out and I think they got back up here instead of back --

19 THE COURT: I do show 174 as having been admitted.

20 MR. HARDY: We'd offer it, Judge.

21 THE COURT: I do show it as having been admitted.

22 MR. HARDY: Oh, excuse me. Here's the original of the
23 charges.

24 CLERK: You mentioned a 16 a while ago or --

25 MR. MEARS: 16 was the Defendant's.

1 THE COURT: Mr. Mitchell?

2 MR. MITCHELL: Yes, sir.

3 THE COURT: Let's go over your list, please, sir.

4 If you'd start with --

5 MR. MITCHELL: Yes, sir.

6 THE COURT: -- what you have listed first.

7 MR. MITCHELL: Number 1 was the shirt sleeve of the
8 victim collected by Ken Collins. That's Number 1.

9 Did you offer that, Mr. Hardy?

10 MR. HARDY: Yes, sir; I believe so.

11 THE COURT: Gentlemen, do you show that as being
12 tendered?

13 CLERK: I don't.

14 THE COURT: Sir?

15 CLERK: I don't. I had a question mark by 1. I, I put
16 a question mark by that as it was not tendered.

17 THE COURT: Mr. Hardy, do you wish to tender Number 1?

18 MR. HARDY: Yes, sir; we would if they don't have an
19 objection. If they have an objection, we won't tender it.

20 MR. MEARS: We don't have an objection. I believe
21 there was no testimony concerning any use of that, but we
22 wouldn't have any objection.

23 MR. MITCHELL: I believe it was identified by Mr.
24 Collins. He said he cut it off the man.

25 MR. MEARS: We don't have any objection.

1 THE COURT: It's admitted without objection.

2 MR. MITCHELL: Exhibit Number 2 is a can of Budweiser.

3 THE COURT: I show that as being in.

4 MR. MITCHELL: Exhibit Number 3 is a can of Budweiser.

5 THE COURT: In.

6 MR. MITCHELL: Exhibit Number 4 is a piece of beer
7 carton.

8 THE COURT: Gentlemen, if your notes are different than
9 mine, please bring that to my attention.

10 3 and 4, I show in.

11 MR. MITCHELL: Exhibit 5 was a .38 derringer from the
12 victim. I don't believe that was offered. Mr. Hardy?

13 THE COURT: I show, I show 5 and 6, both of them as
14 being tendered and admitted.

15 MR. MITCHELL: Okay. All right.

16 CLERK: Judge, I've got a 5-A and a 6-A. I don't have
17 a 5 or a 6 entered.

18 MR. HARDY: 5-A and 6-A were in bags which are 5 and 6,
19 I think, Judge, is the way it went.

20 MR. MITCHELL: Were those the bullets, the pellets?

21 MR. HARDY: Right here, Judge. 5-A and 6-B are within
22 the bags which are labeled 5 and 6, and they were all
23 offered.

24 THE COURT: All right, sir.

25 MR. HARDY: 5-A and 6-A are in 5, the bag labeled 5 and

1 6.

2 MR. MEARS: We don't have, we don't have any objection
3 at this time. I don't, I don't think we had any objections,
4 Your Honor, and don't have any objection.

5 THE COURT: I show the pistols as being in, not
6 necessarily the bags. But they're all in now.

7 MR. HARDY: Yes, sir.

8 THE COURT: Yes, sir.

9 MR. MITCHELL: Exhibit Number 7 is a roll of paper
10 towels.

11 COURT REPORTER: I don't believe anyone ever identified
12 that.

13 THE COURT: Yeah; Mr. Weaver did.

14 MR. MITCHELL: I believe it was talked about by Mr.
15 Weaver.

16 THE COURT: Mr. Weaver identified it. It's already
17 been admitted.

18 MR. MITCHELL: Exhibit Number 8 is the pencil. I
19 believe that was discussed by Mr. Collins and Mr. Weaver.

20 THE COURT: I knew there was something I forgot to ask
21 both sides to do, and that's provide me with an exhibit list
22 so I wouldn't have to do this.

23 MR. MITCHELL: I believe we can -- I can make a xerox
24 copy of this, Judge, if the Court would like.

25 THE COURT: What I'm doing is comparing it to my notes,

1 whether or not it's been admitted.

2 MR. MITCHELL: Exhibit 8 is the pencil.

3 THE COURT: And, of course, mine, mine are in the order
4 that they were tendered.

5 MR. MITCHELL: Yes, sir.

6 MR. HARDY: Here's Number 7, the paper towels.

7 THE COURT: 8, the pencil, I show as being admitted.

8 MR. MITCHELL: Exhibit 9 is a pack of cigarettes.

9 THE COURT: That was later on.

10 MR. MITCHELL: Yes, sir. I believe that was Mr.
11 Collins talking about that.

12 THE COURT: Yes, sir. 9 has been admitted.

13 MR. MITCHELL: Exhibit 10 is glass fragments from the
14 floor at the Junior Food Store.

15 THE COURT: I show 10 and 11 being admitted.

16 MR. MITCHELL: 11 was also glass fragments.

17 THE COURT: Yes, sir.

18 MR. MITCHELL: Exhibit 12 are latent print cards.
19 Exhibit 12 are latent fingerprint cards.

20 MR. HARDY: I think it was given that other number 23
21 that --

22 MR. MITCHELL: No. 23 is a picture.

23 MR. HARDY: The bag we just had that had the
24 fingerprints in it, Mr. Mears. 184, Judge, I think is the
25 latent there. It wasn't 12. It wasn't offered as 12.

1 MR. MITCHELL: Okay. 12 wasn't offered. It was
2 relabeled.

3 THE COURT: Number 184 I show as being in.

4 MR. MITCHELL: Exhibit 13 are these plaster casts.

5 THE COURT: Those are in. 14, 15, 16, 17, 18, 19, 20,
6 22, and I have -- it was called out as 27. I don't know if
7 somebody -- if it was actually supposed to be 21 or not.

8 MR. MITCHELL: 14, I have is clothing of Corey Clark.
9 14-A is shoes.

10 THE COURT: That's not been tendered.

11 MR. MITCHELL: Sir?

12 THE COURT: It's not been -- 14, 15, 16, 17, 18, 19,
13 20, 22 and what I have written down as 27 have not been
14 tendered.

15 MR. HARDY: We'd offer them all, Judge.

16 THE COURT: Now, is it, in fact, 27 or is it 21?

17 MR. HARDY: Yes, sir. 27 is --

18 MR. MITCHELL: 27 is Gary Young.

19 THE COURT: Any objections?

20 MR. MEARS: We have no objection, Your Honor.

21 THE COURT: Admitted without objection.

22 MR. MITCHELL: Judge, there was a 14-A, shoes of Corey
23 Clark.

24 THE COURT: Those have been admitted.

25 MR. MITCHELL: 16-A, also a pair of shoes.

1 THE COURT: All of the shoes have been admitted.

2 MR. MITCHELL: 18-B and 27-C, I think.

3 THE COURT: 27-C.

4 MR. MITCHELL: Yes, sir.

5 CLERK: Judge, I don't have a 21, 24, 25 and 26.

6 MR. MITCHELL: Okay. All right. 21 was three pairs of
7 white socks.

8 MR. HARDY: 15, 24, and 21 were not offered, Your
9 Honor.

10 THE COURT: Well, 15, 15 was just offered a few minutes
11 ago and admitted.

12 MR. HARDY: Excuse me. I mean, 21, you just asked
13 about that?

14 THE COURT: Yes, sir.

15 MR. MITCHELL: All right. Mr. Hardy, have we got, have
16 we got 19, 20 and 22? We never discussed those. That's
17 items of clothing. A green plaid flannel jacket --

18 THE COURT: Those, those were just --

19 MR. MITCHELL: -- a white T-shirt --

20 THE COURT: -- just tendered and admitted. 23,
21 fingerprint card has been admitted --

22 MR. MITCHELL: Those are photos.

23 THE COURT: Sir?

24 MR. MITCHELL: I'm sorry, Judge.

25 THE COURT: You show 23 as a --

1 MR. MITCHELL: Photos of fingerprints on beer carton.

2 THE COURT: What is the number of that bag that you
3 told me a little while ago, Mr. Hardy?

4 MR. HARDY: 184, Your Honor, the -- this is, with the
5 fingerprint cards is 184. The pictures of the fingerprint
6 lifted from the beer carton is 23.

7 THE COURT: All right. 23 had been tendered and
8 admitted.

9 MR. MITCHELL: I don't believe that we offered 24; is
10 that correct, Mr. Hardy?

11 MR. HARDY: No, sir.

12 MR. MITCHELL: Okay. I don't believe we offered 25
13 either; did we? That was two packs of negatives.

14 MR. HARDY: No, sir. Those were just negatives of
15 pictures.

16 MR. MITCHELL: 26 was --

17 THE COURT: Gentlemen, let's back up. I think it's
18 going to be easier -- We're going to go with my list.

19 MR. MITCHELL: Yes, sir.

20 MR. HARDY: Yes, sir.

21 THE COURT: Yours are in order. It's going to be a lot
22 quicker for you to find yours when I call it out than it is
23 for me to find it on my list when you call it out.

24 MR. MITCHELL: Yes, sir. If I could explain to the
25 Court what we did was to go down the evidence custodian's

1 list. It was less confusing that way.

2 THE COURT: Oh, that's fine. What I should have done
3 is had you type your list up, provide a copy to the Clerk,
4 to the court reporter, to the Defense, to myself before we
5 got started. I didn't -- I failed to do that.

6 All right. 150.

7 MR. MITCHELL: 150 is an evidence, F. B. I. evidence --

8 THE COURT: Custody letter.

9 MR. MITCHELL: Sir?

10 THE COURT: Custody letter in regards to the videotape.

11 MR. MITCHELL: Yes, sir. Federal form number 192.

12 THE COURT: That's in. 32, original videotape is in.
13 31, box with pictures and tapes, is in. 149, pictures of
14 still photographs, is in. 152, five by seven pictures,
15 still photographs, in. 151 is in. 154 and 155 were
16 tendered and admitted during the motion, during the hearing
17 on whether or not to admit the videotape but otherwise were
18 never tendered. Those are the empty bags that had tapes in
19 them.

20 MR. HARDY: Mr. Mears, these bags that were referred
21 to, these bags were never used.

22 MR. MEARS: I don't see any reason for them to go in,
23 Judge, unless the State wants them in. It's been my
24 experience if you've got an empty bag out there, that just
25 causes questions. And while sometimes I think questions are

1 good, in this case I don't see any benefit to my client to
2 having the jurors asking what is being kept from them.

3 MR. HARDY: We'll put them in the other bags, Judge. I
4 didn't offer them. Mr. Mears talked about it.

5 THE COURT: All right, sir. 153.

6 MR. MITCHELL: I have that as an empty paper bag as
7 well.

8 THE COURT: What do you show it as, Mr. Hutchings?

9 CLERK: Judge, I show it as the submission sheet that
10 the F. B. I. agent testified about, the evidence submission
11 sheet that was wrapped around the tape.

12 THE COURT: Right. It's a white piece of paper, more
13 or less -- I wouldn't call it a chain of custody letter, but
14 it's a white sheet of paper. I show it as being in.

15 MR. HARDY: It's the evidence sheet that was around the
16 tape.

17 THE COURT: 33 through 36 are photos, which are in.
18 38, 39 and 40 are photos, which are in. These are of the
19 deli scene. 41 and 42, deli scene, are in. 44 -- 43, 44
20 and 45, photos deli, are in. 37, photo of Dan Wilson, in.
21 29 of Mr. Wilson, in. 32-A is in, slowed down version of
22 the videotape. 162 is the actual firearm, which is in.
23 101, 102, 103, 104, photos of Jackson Street, which are in.
24 89 is a photo of Jackson Street, which is in. 90, photo
25 Jackson Street, in. As is 91. 53 is a photo of Mr. Slys

1 behind the counter, is in. The following photographs also
2 relate to the Jackson Street incident: 100, 99, 98 are
3 shoeprints, they are in. 95, 96, 97 of beer, are in. 92,
4 93, 94, part of beer container, are in. 30-A and 30-B,
5 black sock hat and green sweat jacket, are in.

6 CLERK: Judge, could I ask about Court's 1, which is a
7 summary of statements, Gary Young, that was --

8 THE COURT: About what?

9 CLERK: There's a Court 1 exhibit that's a summary of
10 the statements of Gary Young. That doesn't go out?

11 THE COURT: No, sir.

12 MR. MEARS: That was used initially to try to refresh
13 Mr. Young's recollection, I believe.

14 THE COURT: Yes, sir. 106. And the following are
15 photographs of Jackson Street area and the clerk. 106,
16 Jackson Street, 107. 54, 55, 56, 57, clerk. 48, 49, 50,
17 likewise Jackson Street incident. Those are all in. 46 and
18 47 are photographs of the deli incident. 167 are the
19 certificates in regards to the, Off. Williams' training and
20 certification as a tracking dog handler. 163 --

21 CLERK: I don't show it.

22 THE COURT: Sir?

23 CLERK: 167, I don't show as being admitted.

24 MR. HARDY: We'd offer it, Your Honor, if it hasn't
25 been offered.

1 THE COURT: I think it was already -- Well, --

2 MR. MEARS: I think it was offered. I think I objected
3 to it on the basis of relevancy and I think the Court let it
4 in over objection.

5 THE COURT: That's what I recall. Yes, sir; it is in.

6 MR. MEARS: I'm going to ask the Court to reconsider
7 that ruling though.

8 THE COURT: It's in. 163 is the Defendant's
9 fingerprint card which we've discussed editing to some
10 extent. 156, shell casing from the deli. 52, photographs
11 of Mr. Slyszy with pencil in hand, as is 60. 61, photograph
12 shell casing. And this is at Jackson Street, I believe.
13 No. This may be the deli, or Jackson Street. My notes
14 don't indicate that.

15 MR. MITCHELL: Which number?

16 THE COURT: 61.

17 MR. MITCHELL: 61 is Junior, Junior Foods.

18 THE COURT: Right. Went in through Mr. Weaver's
19 testimony. 62, 63, 64, 65 are likewise photographs of shell
20 casings, are in. 66, 67, photographs of the safe, safe
21 area. 81, bag of money, as is 82. Those are in. The
22 following are in: 68, 69, 70, which are again photographs
23 under the counter area. 71, photograph of roll of paper
24 towels, which is in, as is 72. 7 is the actual roll of
25 paper towels, which is in. 76, photographs behind the

1 counter at Jackson Street -- Junior Food Store. 76 is in.
2 77 is in. 78 is in. Those, again, being photographs. 79
3 is in. 80 is in. 83 and 84 are in. 168 is the Miranda
4 waiver of Gary Young. That is it. As is 169, the
5 transcript of interview with Gary Young. And 28, the actual
6 micro cassette tape.

7 MR. MEANS: Judge, the transcript doesn't go out with
8 the jury as I understand it, Your Honor.

9 THE COURT: No, sir.

10 MR. HARDY: Does the Clerk of the Court have that one?
11 It's not up on the table up here.

12 CLERK: I hope I do because I think I put that one up.

13 THE COURT: What is that? The transcript or the tape?

14 MR. HARDY: The transcript, Your Honor. I think the
15 Clerk must have it.

16 THE COURT: Have you got the tape up there?

17 MR. HARDY: The tape's in the envelope.

18 THE COURT: All right.

19 MR. HARDY: Do you want me to give it to the Clerk too?

20 CLERK: Does the tape go out?

21 THE COURT: The tape doesn't go out but it stays in
22 evidence. 171. Well, we've already discussed these.
23 Photographs of Young, Clark, Cooksey and Lucas, booking
24 photographs.

25 MR. HARDY: Yes, sir.

1 THE COURT: The following are photographs which are in:
2 143, 148, 144, 147. All right. Do you gentlemen show 157
3 as being admitted?

4 MR. MITCHELL: 157 is -- Yes, sir.

5 THE COURT: That's the bullet testified to by Dr.
6 Parker. 141, 145, 146, 140 and 142 are photographs in
7 regards to skin stippling of Mr. Slys, which are in. 158,
8 the second bullet, which is in, that Dr. Parker took from
9 Mr. Slys. We're already addressed 174, 2, 3 and 4. 87 and
10 88, photos of plaster casts, which are in. 139 is in. The
11 following are photos, again of Jackson Street incidents,
12 which are in: 73, 75, 65, 74, 86, 105, 58 and 59. 159 is
13 the shell casing, Jackson Street, which is in. As is 160.
14 138 is the drawing of the cash register area as testified to
15 by Ken Collins, is in. 8 is, in fact, the pencil, which is
16 in. 127 -- Well, the following are photos of the crime
17 scene which are in: 127, 120, 119, 130, 129, 128, 126, 125,
18 122, 123, 124, 113, 110, 112, 108, 115, 109, 111, 116, 117,
19 131, 132, 135, 134, 133, 121. 165 is the latent, the
20 fingerprint, latent lift cards, are in. Is that what you
21 gentlemen show?

22 MR. MITCHELL: Yes, sir. Yes, sir.

23 THE COURT: Okay. 176, Mr. Collins' sketch of the
24 overall store, is in. 156, pill box, is in. 161, in,
25 bullet and shell casing. 179, that's the envelope

1 containing eighteen photographs, is in. 180, 181, 182, 183,
2 photostatic copies of the shoe soles, are in, although the
3 State, the State stipulated they wouldn't go out with the
4 jury.

5 CLERK: Which ones are those, Judge?

6 THE COURT: 180, 181, 182 and 183, the photostatic
7 copies of the shoe treads. All right. 18, Mr. Cromartie's
8 clothes, are in, or what's purported to be Mr. Cromartie's
9 clothes, are in. 22, the same, in. 27. What do you
10 gentlemen show 27 as being?

11 MR. MITCHELL: Clothing from Gary Young. Clothing
12 identified as from Gary Young.

13 THE COURT: Which is in. Do you show it as being --
14 Mr. Vincent, do you show that as being offered?

15 COURT REPORTER: Judge, you included that with the
16 others, I think, before you started with your list.

17 THE COURT: Oh, that's correct. That's correct. It is
18 in. All right. 164 is the latent fingerprint card in
19 regards to the beer flap. 165, the twelve latent
20 fingerprint cards from the Jackson Street area. Do you
21 gentlemen show those as being in?

22 COURT REPORTER: I didn't show 164 as being in. I
23 showed 165 as being in.

24 CLERK: I did too. I've got 165. I don't show a 164.

25 COURT REPORTER: I've got 164 as a fingerprint card.

1 MR. HARDY: A card like this?

2 THE COURT: No, sir. That's 163.

3 MR. HARDY: 165, Your Honor, is the packet.

4 THE COURT: 164.

5 MR. HARDY: Is the card from the beer carton, Your
6 Honor. I think we have not offered -- If we have not, we'll
7 offer 164 and 165.

8 THE COURT: Any objections?

9 MR. MEARS: I thought they'd already been offered. I
10 don't, I didn't have any objection to them.

11 THE COURT: Admitted without objection.

12 166 is a chart in regards to a footprint. I show that
13 as being in. Do you gentlemen show any others? Sir?

14 MR. HARDY: 166 was a fingerprint --

15 THE COURT: What number do you show that as being?

16 MR. HARDY: 166, Your Honor. The big chart.

17 THE COURT: The chart of known Defendant's print and
18 the latent print?

19 MR. HARDY: Yes, sir.

20 THE COURT: And it's in. I show it as being tendered
21 and admitted. Is that what you gentlemen show?

22 CLERK: Yes, sir.

23 THE COURT: Any others?

24 COURT REPORTER: What about 131 and 134? I'm showing
25 photographs.

1 THE COURT: What are those?

2 CLERK: I've got, I've got a question mark by that 131
3 as well.

4 MR. MITCHELL: All right. 131, I show is a photograph,
5 view of, view of the inside of the Junior Food Store.

6 THE COURT: I show that as being admitted. As do I
7 134.

8 MR. MEARS: Judge, what about this box right here?
9 This is Number 13, with shoe impressions?

10 THE COURT: It's been admitted.

11 COURT REPORTER: What about Number 106, which I show as
12 a photograph?

13 THE COURT: Number what?

14 COURT REPORTER: Number 106.

15 MR. MITCHELL: It's a view of the victim behind the
16 counter at Junior Food Store, 106.

17 MR. HARDY: It's 106 right here. 131.

18 MR. MEARS: Judge, with regard to 142 and 143, the
19 photographs.

20 THE COURT: Wait just a minute.

21 MR. MEARS: Oh, I'm sorry. I thought --

22 THE COURT: Which one are you asking about? 106?

23 COURT REPORTER: Yes, sir. I was asking about 106. I
24 show it as being identified but not admitted.

25 CLERK: 106. I've got it marked off as being admitted.

1 MR. HARDY: 106, 131 and 132, if we've not offered
2 them, we'll offer them, but I thought we'd offered them.

3 THE COURT: 131 and 132 are already in.

4 MR. MITCHELL: What about 106?

5 THE COURT: I don't have an indication --

6 CLERK: I've just got a photo of the deceased, is what
7 I've got. 106.

8 MR. MEARS: We'd object as duplicative, Your Honor, of
9 those that are already in. There's about ten photographs of
10 Mr. Slysz behind the counter.

11 THE COURT: Sustained.

12 CLERK: So 106 is out?

13 THE COURT: Yes, sir.

14 MR. MEARS: Mr. Hardy and I discussed State's Exhibit
15 142 and 143, and I believe he's agreeable to them being
16 admitted but not going out to the jury. These are
17 photographs of Mr. Slysz at the morgue on the autopsy table.
18 It's questionable as to whether or not it fits in the
19 category of those photographs that relate to autopsies.

20 THE COURT: Gentlemen, why don't we -- I'm going to
21 withhold a ruling on that.

22 MR. MEARS: I believe he had agreed to --

23 THE COURT: Let's wait and see what the Defense has to
24 show and then -- I don't know that there's going to be
25 anything relevant but --

1 MR. MEARS: I, I don't intend to get into that area.

2 MR. HARDY: I don't have any problem with the Clerk
3 keeping them, Judge.

4 THE COURT: All right, sir.

5 MR. HARDY: Those two right there, the man laying on
6 the gurney before the autopsy.

7 THE COURT: Are there any other exhibits which we have
8 not addressed, as to whether or not they've been admitted?

9 MR. MITCHELL: Were 118 and 119 admitted, Judge? I
10 show those as pictures of the beer cooler in the Junior Food
11 Store.

12 MR. MEARS: One of those was a bar across the window, I
13 believe.

14 MR. MITCHELL: I think it has but I didn't check it
15 off.

16 THE COURT: 119, I show as being admitted. Gentlemen,
17 do you have 118?

18 CLERK: I've got a 118 but I don't have a 119.

19 COURT REPORTER: I don't have either one.

20 THE COURT: Do you wish to proffer them, Mr. Mitchell?

21 MR. MITCHELL: Picture of the beer cooler in the Junior
22 Food Store. Yes, sir. If we haven't offered it.

23 MR. MEARS: We don't have any objection to 118 and 119.
24 I remember seeing those.

25 THE COURT: All right. It's admitted without

1 objection.

2 All right, Mr. Mears, I understand you have a motion.

3 MR. MEARS: Are you ready for me to make that?

4 THE COURT: Yes, sir. Does the State rest?

5 MR. HARDY: Yes, sir, with the introduction of all the
6 evidence; we rest.

7 THE COURT: All right, sir.

8 MR. MEARS: Just one moment, Your Honor.

9 Your Honor, on behalf of the Defendant at this time I
10 would move for a Directed Verdict of Acquittal as to count
11 one of the indictment. Count one alleges the Aggravated
12 Assault of Mr. Dan Wilson on the 7th day of April of 1994.
13 We'd submit there's been insufficient evidence upon which a
14 jury can make a decision with regard to that particular
15 offense. We feel that the State has failed to meet its
16 burden of proof beyond a reasonable doubt. And that there
17 is a lack of evidence sufficient upon which, the absence of
18 which the Court can make a determination and that a Directed
19 Verdict of Acquittal should be granted as to count one, the
20 aggravated assault on Mr. Dan Wilson.

21 THE COURT: All right, sir.

22 MR. MEARS: We would move, we would ask the Court to
23 grant a Directed Verdict of Acquittal as to count two, which
24 is the charge that Ray Jefferson Cromartie committed the
25 offense of Possession of a Firearm During the Commission of

1 a Crime in that the crime was the aggravated assault of Mr.
2 Dan Wilson. We would ask the Court to grant a Directed
3 Verdict of Acquittal as to count two of the indictment.

4 We would ask the Court to grant a Directed Verdict of
5 Acquittal as to count three of the indictment, which alleges
6 that Ray Jefferson Cromartie committed the offense of
7 Aggravated Battery on the person of Mr. Dan Wilson in that
8 he severed, by shooting him he severed his carotid artery.
9 We would move for a Directed Verdict of Acquittal based upon
10 the lack of evidence and insufficiency of evidence upon
11 which a jury could make a decision with regard to that
12 particular count.

13 We would ask the Court to grant a Directed Verdict of
14 Acquittal as to count four in that Ray Jefferson Cromartie
15 was accused of the offense of Possession of a Firearm During
16 the Commission of a Crime, to wit: the Aggravated Battery.

17 Your Honor, also with regard to counts four and two, we
18 feel that those counts would also merge if the Court is not
19 going to grant a directed verdict as to those. Only one of
20 those counts should be submitted to the jury for
21 determination because all of the facts that are used to show
22 count two are the same facts which are used to show count
23 four. And we'd ask the Court not to submit one of those
24 counts, because you can only use -- now, I know that usually
25 goes to a merger of the offenses for sentencing. However,

1 I'm making a motion with regard to even submitting it to the
2 jury base upon the same principle.

3 We would ask the Court to grant a Directed Verdict of
4 Acquittal as to count five in that there's been insufficient
5 showing of evidence that Ray Jefferson, Ray Jefferson
6 Cromartie on the 10th day of April, 1994 did willfully and
7 intentionally with malice aforethought cause the death of
8 Richard A. Slysz. We would move for a directed verdict on
9 that particular count on the basis there's been an
10 insufficient showing of evidence upon which a jury could
11 make a determination that Mr. Cromartie was the person who
12 caused the death of Mr. Slysz.

13 We would move for a Directed Verdict of Acquittal as to
14 count six, to wit: Mr. Ray Jefferson Cromartie committed the
15 offense of Possession of a Firearm During the Commission of
16 a Crime, to wit: murder. We would move for a Directed
17 Verdict of Acquittal in that count, that count.

18 We would move a Directed Verdict of Acquittal on count
19 seven charging Mr. Cromartie with the offense of Armed
20 Robbery in that he did take two twelve packs of beer from
21 the immediate presence of Mr. Richard A. Slysz. We'd move
22 for a Directed Verdict of Acquittal as to that count.

23 As to count eight we would move for a Directed Verdict
24 of Acquittal with regard to the allegation that Mr. Ray
25 Jefferson Cromartie possessed a firearm during the

1 commission of a crime, to wit: the armed robbery of Mr.
2 Richard A. Slys.

3 Again, I would also ask the Court to consider if you do
4 not, if you do not grant a Directed Verdict of Acquittal as
5 to count eight and count six, that the Court only submit one
6 of those counts to the jury for consideration because the
7 same set of facts as are alleged in count six and count
8 eight, they're -- they've used those, they used the evidence
9 up. You can only use it one time to show the commission of
10 possession of a firearm during the commission of a felony,
11 because the way the count eight is drawn, excuse me, because
12 the way count five is drawn there's been no indictment,
13 there's been no count set forth in the indictment for the
14 offense of Felony Murder. So there's no underlying felony
15 that would support the Possession of a Firearm During the
16 Commission of a Felony of Armed Robbery. Obviously, that
17 may come up during the requests for charge at the
18 appropriate time.

19 But at this time, based upon the totality of the
20 evidence presented by the State, we would ask the Court to
21 grant a verdict, Directed Verdict of Acquittal on all
22 counts.

23 THE COURT: Thank you, sir.

24 Any response?

25 MR. MITCHELL: Your Honor, based on the standard of

1 Jackson versus Virginia, taking all of the evidence in the
2 light most favorable to the State, we would submit that
3 there was ample evidence to prove all the counts, with
4 respect to counts one and two, three and four, involving the
5 Madison Street Deli. There was testimony from Mr. Cooksey,
6 I believe, that the evidence of Mr. Young's statements were
7 admitted as substantive evidence pursuant to the Gibbons
8 case. With respect to counts five, six, seven and eight,
9 there has been direct testimony from witnesses to the event
10 with the addition of the fingerprint, shoeprint and other
11 physical evidence. Taking all of the evidence in the light
12 most favorable to the State, we'd submit that a reasonable
13 trier of fact could find the Defendant guilty of all the
14 offenses charged.

15 With respect to any potential murder issue, it's my
16 understanding of the law that a Defendant may be charged
17 with and prosecuted from all the offenses which might arise
18 out of that person's conduct. And the issue of, the issue
19 of merger would only arise, assuming that there were to have
20 been a conviction of all the charges, and it'd be premature
21 at this time to discuss the issue of merger.

22 THE COURT: All right. Thank you, sir.

23 Gentlemen, based upon the evidence we've heard today, I
24 do think there's sufficient evidence in the record for the
25 jurors to find beyond a reasonable doubt the Defendant's

1 guilt of each offense alleged in the indictment. And,
2 therefore, the Motion for a Directed Verdict is overruled
3 and denied.

4 Insofar as the motions concerning the merger of
5 offenses and ask the Court, asking the Court at this time
6 not to submit those to the jury, I think that is not
7 appropriate at this time simply, for instance, you know, the
8 jury -- if I -- as to the Aggravated Battery and Aggravated
9 Assault charge, I guess what you're asking me to do is
10 simply not submit one of those and the jury could find
11 either one of those without having to find both of them or
12 without finding that there was evidence to support one of
13 them anyway.

14 So, in regards to that, that motion, or those motions
15 are also overruled and denied.

16 We'll be in recess until 1:15.

17 (Whereupon the Court is recessed for lunch, and upon
18 reconvening at approximately 1:20 P. M. the following
19 transpired outside the jury's presence)

20 THE COURT: Gentlemen, are we ready to proceed at this
21 time?

22 MR. MEARS: We're ready, Your Honor.

23 THE COURT: Mr. Hardy, do you wish to rest in the
24 presence of the jury?

25 THE COURT: Yes, sir.

1 THE COURT: All right, sir. If you --

2 MR. MEARS: Your Honor, do you want me to go ahead and
3 put -- Excuse me. Do you want me to go ahead and put on the
4 record with regard to -- or do you want me to wait and do
5 that later?

6 THE COURT: We'll go ahead and do that.

7 Hold them up just a moment.

8 Are they out there?

9 BAILIFF: No, sir.

10 THE COURT: Okay.

11 MR. MEARS: Your Honor, I anticipate that the State is
12 going to rest at this point in front of the jury. At that
13 point I'm sure the Court would ask for the Defendant to go
14 forward with his case.

15 With regard to the question of whether or not Mr.
16 Cromartie will testify in his own behalf at this phase of
17 the case, whether he's going to testify or not, Mr. Bryant
18 and I have discussed this matter with Mr. Cromartie. We've
19 advised Mr. Cromartie that he has the right to testify in
20 his own behalf. We've also advised him that he has a right
21 not to testify in his own behalf. And if he chooses not to
22 testify that the Court would issue appropriate instructions
23 to the jury not to consider his exercising his right not to
24 testify against him. And I anticipate asking the Court to
25 do that because based upon our advice and based upon our

1 discussions with Mr. Cromartie, Mr. Cromartie is not going
2 to testify in this particular case.

3 THE COURT: All right, sir. Mr. Mears, have you
4 informed Mr. Cromartie that it's, that it's his decision.
5 It's not, it's not his attorney's decision. It's his
6 decision to make with the counsel of his attorneys as to
7 whether or not to testify?

8 MR. MEARS: Yes, sir. I specifically told Mr.
9 Cromartie that I could not tell him to testify nor could I
10 tell him not to testify. I could advise him as to his
11 rights, I could advise him as to different matters, but the
12 decision to testify or not to testify is a personal right
13 that the Constitution gives to him and to him alone. And I
14 have so advised him of that.

15 THE COURT: All right, sir.

16 Mr. Cromartie, do you understand all of the statements
17 made by Mr. Mears on your behalf?

18 MR. CROMARTIE: Yes, sir.

19 THE COURT: And do you concur in all of those
20 statements?

21 MR. CROMARTIE: Yes, sir.

22 THE COURT: All right, sir.

23 You may bring the jury in.

24 (Whereupon the jury returns to the courtroom,
25 after which the following transpired)

1 THE COURT: Mr. Hardy, do you have an announcement at
2 this time?

3 MR. HARDY: Your Honor, the State would rest with the
4 introduction of all the testimony and all the evidence.

5 THE COURT: All right, sir.

6 Mr. Mears, you may call your first witness.

7 MR. MEARS: Your Honor, we would call one witness. It
8 will be Patrolman, former Patrolman David Allen.

9 THE COURT: David Allen.

10 I believe Mr. Allen has previously been sworn.

11 DAVID KEITH ALLEN

12 having previously been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MEARS:

15 Q Good afternoon, Mr. Allen.

16 A Good afternoon.

17 Q Mr. Allen, I'm going to ask you some questions with
18 regard to the incident on April the 10th at the Junior Food
19 Store. I believe you had testified previously before the ladies
20 and gentlemen, ladies and gentlemen of this jury that you were
21 one, if not the first, uniformed officer to respond to that
22 scene; is that correct?

23 A Yes, sir.

24 Q And when you arrived, what was the first thing that you
25 did when you arrived on the scene?

1 A The first thing I did when I arrived was I had noticed
2 the vehicles that were there, the people, the two men that were
3 there at the store. I then spoke with the two men that were
4 there.

5 Q Mr. Allen, at that time how long had you been a law
6 enforcement officer?

7 A Uh, two and a half, three years.

8 Q You were not a detective or an investigative officer at
9 that time; is that correct?

10 A No, sir.

11 Q You were a uniformed officer; is that correct?

12 A Yes, sir.

13 Q But you had gone, had you not, to -- Did you go to
14 police academy training?

15 A Yes, sir; I did.

16 Q And where did you go?

17 A ABAC in Tifton.

18 Q And you had been certified as, as a police officer; is
19 that correct?

20 A Yes, sir.

21 Q And as a police officer you were trained in how to
22 respond to various crime scenes; is that correct?

23 A Yes, sir.

24 Q And would it be a fair statement to say that one of the
25 first things you do upon arriving is look for possible witnesses

1 to the incident for which you are called?

2 A Yes, sir.

3 Q And did you prepare a written report after this
4 incident on April the 10th?

5 A Yes, sir; I did.

6 Q Have you had a chance to review that report?

7 A Yes, sir.

8 Q Does that report reflect your actions in interviewing
9 any of the potential or possible witnesses to the incident at the
10 Junior Food Store?

11 A Yes, sir; I believe it does.

12 Q You had talked to Bruce Taylor, Joseph Walsh and Mr.
13 Walter Seitz; is that correct?

14 A Yes, sir.

15 Q And did you record in any form or fashion their
16 comments or the information that they related to you?

17 A I wrote down the descriptions and what -- of the
18 suspects and, you know, from what they saw when they, you know,
19 were there at the store.

20 Q Okay. You went -- After you had talked to Mr. Taylor
21 and Mr. Walsh, did you walk across the street to the BP station
22 and talk to Mr. Seitz?

23 A Yes, sir.

24 Q Okay. How soon after you had arrived on the scene?

25 And I know you -- I'm asking you to go back a ways. But how soon

1 after you arrived on the scene did you talk to Mr. Walsh and Mr.
2 Taylor?

3 A As far as getting the descriptions?

4 Q Yes, sir.

5 A Maybe between five and ten minutes after I arrived.

6 Q Okay. A very short period of time? Is that -- Would
7 that be a fair statement?

8 A Yes, sir.

9 Q Less than fifteen minutes after you arrived you were
10 taking down descriptions from them; is that correct?

11 A Yes, sir.

12 Q And these were descriptions based upon what they saw
13 that night about fifteen minutes before you arrived?

14 A Yes, sir.

15 Q Would that be a fair statement?

16 A Yes, sir.

17 Q Looking at page five of your report -- First of all,
18 what is the purpose of obtaining descriptions from possible
19 witnesses? I know that sounds like a simple question, but from a
20 police standpoint, what is the purpose of obtaining accurate
21 descriptions as soon as you can when you arrive on the scene?

22 A It's to put out a bolo or a lookout for the suspects,
23 to try and apprehend the suspects as quickly as possible before
24 they get too far away from the scene or before they were gone
25 completely.

1 Q We've used the term, I think the term "Bolo" has been
2 used in some of the questioning. Would you just tell the ladies
3 and gentlemen of the jury what that term means?

4 A Bolo is just -- it's a shortened version of be on the
5 lookout. It's the first letters of each of that. It means, you
6 know, it's just a shorter way of saying be on the lookout for
7 someone or something.

8 Q Based upon the information you received within fifteen
9 minutes of the time you arrived at the Junior Food Store, what
10 was the description of the individual that you designated in your
11 report as number one? And I assume that's just to keep them
12 separate; is that correct?

13 A Yes, sir; that's correct.

14 Q What was the description, physical description given to
15 you by the witnesses within fifteen minutes of your arrival?

16 A A black male, five ten to six feet tall, hundred and
17 eighty pounds, light colored shirt, dark pants, early twenties,
18 and wearing a cap.

19 Q Okay. Would you look and see -- it says dark pants.
20 Would you just look at that, please?

21 A Excuse me. Dark shorts.

22 Q Dark shorts?

23 A Excuse me. Yes, sir.

24 Q Okay. So, black male five ten, a hundred and eighty
25 pounds, early twenties, light shirt, dark shorts, and cap?

1 A Yes, sir.

2 Q What was the description given to you by these
3 witnesses of the other individual, the one that you've designated
4 as number two?

5 A Black male, five ten to six feet, hundred and eighty
6 pounds, dark shirt, dark pants, early twenties.

7 Q Were there any other descriptions given to you that
8 night by any of these, these individuals who were there?

9 A We had them fill out a, a description sheet which is
10 the back sheets on my report of, you know, just giving them
11 several different things to look over and then asking them to
12 mark the ones that, that they remembered.

13 Q Was that inconsistent with the report that they gave
14 you?

15 A No, sir; I don't believe so. I haven't looked over
16 them that closely to tell.

17 Q If it had, it'd have been something that would have
18 caught your attention. You would have -- Because this is the
19 first identification that you received after arriving on the
20 scene; wasn't it?

21 A Yes, sir; it was.

22 Q Did anyone ever mention to you that they'd seen an
23 individual wearing glasses?

24 A No, sir; not that I remember.

25 MR. MEARS: Thank you. Nothing further.

1 Thank you, Judge.

2 CROSS EXAMINATION

3 BY MR. HARDY:

4 Q I think, David, you also wrote down another description
5 that was given to you also, also a description of a black shirt,
6 black pants, page number three? First -- about line number ten.

7 A Yes, sir.

8 Q Light colored T-shirt and dark pants?

9 A Yes, sir.

10 Q And then the other suspect, black shirt and black
11 pants?

12 A Yes, sir.

13 Q There you're talking about pants, and the other one you
14 talk about shorts?

15 A Yes, sir.

16 Q You didn't get an in depth statement from Mr. Taylor;
17 did you?

18 A No, sir.

19 Q Have you seen that?

20 A Mr. Taylor's statement?

21 Q Yes, sir.

22 A No, sir; I have not.

23 Q Where -- When you were at the scene?

24 A No, sir; I have not.

25 Q This one right here, the statement he wrote for chuck

1 Weaver?

2 A No, sir.

3 Q You didn't get into any depth with him; did you, Mr.
4 Allen?

5 A No, sir. Just got a very brief description so we could
6 get some information out as soon as we could.

7 Q So later on the detectives go into more depth and try
8 to pick the man's mind, so to speak?

9 A Yes, sir.

10 Q Get all the details?

11 A Yes, sir.

12 Q They allow them to write the report sometimes like
13 that?

14 A Yes, sir.

15 Q You didn't see that though; did you?

16 A No, sir. This is the first time I've seen it.

17 Q You just want to get something as quick as you can and
18 get it out on the bolo?

19 A Yes, sir.

20 Q Excuse me. Of course, you were across the street at
21 the BP. It was nighttime when you were out there; wasn't it,
22 David?

23 A Yes, sir; it was.

24 Q Can you see the BP across over there from the Junior
25 Food Store?

1 A Yes, sir.

2 Q It was lit up, fluorescent type lights?

3 A Yes, sir. The outside of the store was.

4 Q I think somebody said it's like, kind of like looking
5 at a TV?

6 A It's lit up very well.

7 Q There are street lights out there and, I think gas pump
8 lights were out there?

9 A Yes, sir.

10 Q I think you also saw the footprint around there; didn't
11 you, David?

12 A Yes, sir; I did.

13 Q And you described it in your report as those wavy
14 lines?

15 A Yes, sir.

16 Q I think I showed you the picture of it the other day?

17 A Yes, sir; you did.

18 Q Did you look at the shoes the other day, Mr. Allen?

19 A The shoes themselves?

20 Q Yes, sir.

21 A No, sir; I did not.

22 Q Number 18-B here, is that what you observed?

23 A Yes, sir.

24 Q Is that consistent with what you saw?

25 A That's consistent with what I saw.

1 Q And where did you see those?

2 A The west side of the store over next to Pinetree
3 Boulevard, right there in the kind of muddy area.

4 Q Sir?

5 A Right there in the kind of, in the mud area where it
6 was real wet, side of the store.

7 Q Sometimes the policemen on the scene make, peripherally
8 get the information and the detectives may get a little deeper
9 into it and ask more questions?

10 A Yes, sir.

11 Q And as to nuances between lighter, darker, longer, or
12 shorter, that kind of thing?

13 A Yes, sir.

14 Q I think one of the descriptions is, one was a taller,
15 slender man? That's on these sheets that were filled out? A
16 darker, taller, thinner man?

17 A Yes, sir; I believe so.

18 Q And the other one was more stocky than the taller,
19 thinner man?

20 A Yes, sir.

21 Q And he was lighter colored, the shorter one?

22 A Yes, sir. That's what was marked on the description.

23 Q 6, Defendant's 6 and 171, Mr. Allen, which is the
24 darker of the two?

25 A The darker of the two is this one, 171.

1 Q What's the name of that person?

2 A Corey -- Corey Allen Clark is his name.

3 Q And the other fellow? He's the lighter of the two,
4 Number 6?

5 A Yes, sir; he's the lighter of the two.

6 MR. HARDY: He's with the Court, Your Honor.

7 Thank you.

8 REDIRECT EXAMINATION

9 BY MR. MEARS:

10 Q Mr. Allen, you were asked to identify by skin tone an
11 individual. Do you know what circumstances of lighting in these
12 particular photographs?

13 A No, sir.

14 Q Have you had any training in the ethnicity of
15 identification according to ethnic groups and ethnic sub-groups
16 within ethnic groups?

17 A No, sir.

18 Q Have you had any particularized training in the
19 identification of African-Americans?

20 A No, sir; I have not.

21 Q Have you had any specialized training in the ability to
22 make skin tone comparisons?

23 A No, sir; I have not.

24 Q You were asked whether or not you had been made aware
25 of the statements, more detailed statements, according to Mr.

1 Hardy, of Mr. Taylor; is that true?

2 A Yes, sir.

3 Q Let me ask you to look at this to refresh your
4 recollection about what was said to you. And I call your
5 attention to the first three lines on page two. In fact, in
6 further reflection, Mr. Taylor said they were both were wearing
7 shorts; didn't he?

8 A Now, he's making reference to one wearing shorts,
9 without reading the entire thing --

10 Q Well, why don't you read the entire thing?

11 A (Witness complies) Okay.

12 Q Is there anything, now that you've read that, is there
13 anything that contradicts the initial report that was given to
14 you by the collective report given to you by Mr. Walsh, Mr.
15 Taylor and Mr. Seitz?

16 A The original description that was given to me didn't
17 say anything about any kind of white design on the front of the
18 shirt. I'm not -- His next statement about, the next statement
19 about, you know, the shorts, he said that he believed that they
20 both possibly could be wearing shorts whereas before I was told
21 one was, one was shorts and one was pants.

22 Q What about caps? Did he make reference to either one
23 of them or both of them wearing caps?

24 A In this statement it refers to both wearing caps, and I
25 only have one.

1 Q Did it make any reference to whether or not they
2 discussed their identification and they discussed their
3 observations and came to a decision after talking to each other,
4 about the beer?

5 A Yes, sir; it does.

6 Q What does it say?

7 A It says, "I couldn't really discern what they were
8 carrying but after some speculation between Joe and myself we
9 decided that it was beer. And that is something I can't be sure
10 of, but it's important to note because that's why we turned
11 around. Joe thought he'd seen two twelve packs. The men seemed
12 too young to buy beer and it was after midnight Saturday."

13 Q Said they seemed too young to buy beer?

14 A Yes, sir.

15 Q And that they -- that was speculation that they had the
16 beer?

17 A Yes, sir.

18 MR. MEARS: Okay. Thank you, Mr. Allen.

19 RE CROSS EXAMINATION

20 BY MR. HARDY:

21 Q Also your report said that they were running from the
22 store?

23 A Yes, sir.

24 Q What does it say? If you would read, right in there,
25 if you'd read that, please, sir?

1 A It said, "I decided to ride down Jackson Street and
2 turn off on Pinetree Boulevard. When we reached the intersection
3 of Jackson and Pinetree looking to our left we noticed two black
4 men leaving the front of the Junior Food Store. I turned left
5 onto Pinetree and then we noticed the first, the men first
6 walking to the side of the store and then breaking into a run.
7 Shortly afterward the guy in front dropped something."

8 Q All right. Keep reading at the bottom down there, what
9 Mr. Mears -- the lines he indicated.

10 A "Both men stopped to pick whatever it was and then kept
11 running. In the time that they were beside the store I noticed,
12 as best I can recollect, that they were both wearing caps. The
13 one in front was slightly shorter than the other. He was wearing
14 white shoes and" --

15 Q Do what?

16 A "He was wearing white shoes and a black or dark shirt
17 with some sort of white design on the front."

18 MR. HARDY: Thank you.

19 MR. MEARS: I have no further questions, Your Honor.

20 THE COURT: Thank you, sir.

21 Mr. Mears?

22 MR. MEARS: Your Honor, at this time we would like an
23 opportunity to make sure that we've properly marked and
24 tendered all of the exhibits that we intend to. And then at
25 that point, upon a completion of that task, we would

1 announce that the Defense would rest.

2 THE COURT: All right, sir.

3 MR. MEARS: We can do that -- Perhaps, it might be
4 better to do it -- I'll go ahead -- Would the Court give me
5 permission to tender the exhibits, if we haven't already
6 done so, outside the presence of the jury, I will go ahead
7 and announce that we'll rest at this point so as not to
8 inconvenience the jury while we're doing that.

9 THE COURT: Is there any anticipated rebuttal by the
10 State?

11 MR. HARDY: No, Your Honor. Thank you.

12 THE COURT: All right, gentlemen, with the condition
13 that we'll address the exhibits for the Defense, subject to
14 that condition, does the State close?

15 MR. HARDY: Yes, sir.

16 THE COURT: Defense close?

17 MR. MEARS: Yes, Your Honor.

18 THE COURT: All the evidence is in. The case is
19 closed.

20 Gentlemen, in a moment, after I excuse the jury for a
21 little while, we'll take up the question of what witnesses
22 may be excused and some other matters.

23 Ladies and gentlemen, insofar as the guilt-innocence
24 phase of this trial, all of the evidence is in for your
25 consideration. The law requires that I have a conference

1 with Counsel for the parties to address certain matters that
2 we need to address prior to their interposing or giving
3 their summation or closing arguments to the jury.

4 So, at this time I'm going to excuse you for a certain
5 period of time and then ask that you come back today. And
6 we anticipate resuming the closing arguments at that time.
7 Now, based upon the information I have and the matters that
8 I'm familiar that we need to address, I'm going to excuse
9 you until -- I believe we'd better take an hour. Forty-
10 five minutes, I'm afraid I may have you sitting in the jury
11 room and I don't want to waste any of your time. If you
12 would report back to the jury room by a quarter till 3:00.
13 We should be in a position at that time to begin the
14 summations. Thank you.

15 (Whereupon the jury retires from the courtroom,
16 after which the following transpired)

17 THE COURT: Mr. Mears?

18 MR. MEARS: Your Honor, I just wanted to make sure that
19 we had tendered in together with all of our objections.
20 Defendant's Exhibit 1 was tendered. I think it was
21 introduced.

22 THE COURT: I show Defendant's Exhibits, the following
23 being tendered and admitted. Defendant's 1, 2, 3, 4, 5, 6,
24 7, 8, 9, 10, 11, 12, 13.

25 CLERK: That's what I've got. 14 is the sentences on

1 Corey Clark.

2 MR. MEARS: At this time then we would tender
3 Defendant's Exhibit 14.

4 THE COURT: Any objections?

5 MR. HARDY: Leave it with the Court. It seems to be in
6 the proper form.

7 THE COURT: It's admitted without objection.

8 MR. MEARS: We would tender Defendant's Exhibit 15.

9 THE COURT: It's admitted without objection.

10 MR. MEARS: It appears that State's Exhibit 174 is the
11 original of Defendant's 16. I believe that has already been
12 admitted. Based upon that I will withdraw Defendant's
13 Exhibit 16.

14 THE COURT: All right, sir.

15 MR. MEARS: I believe, Your Honor, the map we had
16 tendered --

17 THE COURT: What number is that? 7?

18 MR. MEARS: That's 7. That's in, I believe; is it not?

19 THE COURT: Yes, sir.

20 MR. MEARS: We had the drawing, Number 17 was the
21 drawing which was a blowup of, I believe, Mr. Collins'
22 sketch. Although the smaller one is in evidence, I'll go
23 ahead and tender 17 because it's got some writings and
24 circles and drawings on it that were put there during his
25 testimony that the small one would not have. So I would

1 tender 17 at this time.

2 THE COURT: Any objections?

3 MR. HARDY: Aside, Your Honor, should they go out to
4 the jury with all those markings on them?

5 THE COURT: We'll admit it into evidence for purposes
6 of the record. Of course, there may be a number of matters
7 we need to address whether or not they constitute continuing
8 testimony and should go out with the jury.

9 MR. MEARS: Well, at least we tender those at this time
10 whether they go out --

11 CAPT. HADLEY: Your Honor, may I approach?

12 THE COURT: Sir?

13 CAPT. HADLEY: Excuse the witnesses?

14 THE COURT: Well, that's one of the questions I've got
15 at this time, Mr. Hadley.

16 Gentlemen, let me -- I know there's some witnesses that
17 should this case enter into a second phase, witnesses that
18 need to remain subject to their subpoena and subject to the
19 rule of sequestration. Otherwise, I think the State had a
20 list of some eighty-three witnesses. Are there any
21 witnesses that can be excused at this time by either party?

22 MR. HARDY: We could basically put them on call, Your
23 Honor. I mean, I think that's what we've been doing. There
24 shouldn't be that many here left. Most of them have been
25 put on call, if we're going to call any.

1 MR. MEARS: I know that Lt. Johnson was here earlier
2 and Lt. --

3 MR. HARDY: If we could just put them on call and let
4 them go, Your Honor.

5 THE COURT: All right, sir.

6 MR. HARDY: They need to get back to work.

7 THE COURT: The State's putting all of its witnesses on
8 call?

9 MR. HARDY: Yes, sir; if we could, please.

10 THE COURT: All right, sir.

11 MR. HARDY: Except Spencer here.

12 MR. MEARS: Any, any witnesses that have been
13 subpoenaed by the Defense, we would ask that they be excused
14 until tomorrow morning at 10:00 o'clock. I don't anticipate
15 them having to be here before then at the very earliest.

16 THE COURT: All right. Any witnesses who have been
17 subpoenaed by the Defense are excused -- The State's
18 witnesses are excused with the exception they're to remain
19 on call. The Defense witnesses, or the ones that have been
20 subpoenaed by the Defense are excused until 10:00 A. M.
21 tomorrow morning.

22 MR. MEARS: Your Honor, would it be the appropriate
23 time to take up a couple of other matters that we need to
24 address the Court about with regard to -- now that we've
25 closed the evidence. We had requested --

1 THE COURT: How long, how long are those matters going
2 to take?

3 MR. MEARS: Very short, Judge.

4 THE COURT: All right, sir.

5 MR. MEARS: We had requested under the Open Records Act
6 all jail records of co-defendants and the other witnesses
7 the State had put on their list who were residents of the
8 jail. We only received records from February, 1995 to the
9 present because all other records apparently had been put in
10 archives. We never received any of the records prior to
11 1995, particularly those in 1994. I would like for those
12 records to be produced, if for no other reason, for us to
13 provide them as part of the record. We might also need them
14 in the event there's a sentencing hearing in this particular
15 case. But we have not been provided with any records under
16 the Open Records Act of jail records. And the Court will
17 recall we had a discussion of that at some, a couple of
18 months ago anyway. Which we're continuing in that request.

19 THE COURT: All right, sir. I think we've addressed it
20 at least a couple, if not maybe three times. It's my
21 understanding that the parties were going to get together,
22 or the Defense was going to get together with the Sheriff's
23 office and address those matters and bring it to the Court's
24 attention if they could not be satisfied. To my knowledge,
25 this is the first time it's been brought to my attention

1 that it has not been satisfied in some extent.

2 MR. MEARS: That's correct, Your Honor. This is the --
3 We weren't sure whether they would be produced during the
4 trial. If they -- All I'm saying is we're continuing in
5 that request. I know that Sheriff Powell has made a good
6 faith effort to locate these records. I simply don't want
7 to have, to rest and let that be the end of our request. I
8 still think we're entitled to those. If they can't find
9 them, they can't produce them, then we just need to be told
10 that so we can make it a part of the record.

11 THE COURT: All right, sir. I think if there was
12 anything that would rise to the level of what could be
13 considered as mitigation evidence that you would be entitled
14 to it, at this point in time.

15 MR. MEARS: I understand, Judge. We also had filed a
16 subpoena for the production of documentary evidence upon the
17 district attorney and his staff, the assistant district
18 attorney and his staff with regard to any documents which
19 relate to agreements, deals, plea offers, things of that
20 nature relating to any of the co-defendants including Gary
21 Young, Corey Clark, Thaddeus Lucas. We have not had a
22 response to that subpoena.

23 THE COURT: Gentlemen, I believe that prior to Corey
24 Clark and Thaddeus Lucas taking the stand that we, on the
25 record, addressed whether or not every, everything within

1 the State's knowledge that would be applicable under the law
2 that should be divulged to the Defense had been and that
3 has, in fact, been addressed on the record.

4 MR. MEARS: And I understand it, Judge. I just wanted
5 to make sure that there's no way that we're waiving that in
6 the event that somewhere down the road someone finds a
7 document that was overlooked or not produced, and I'm
8 certainly not implying that they haven't, but sometimes
9 things get intentionally mislaid or lost. I think they're
10 required to make a good faith effort to look for those. And
11 I'm certainly not waiving that particular subpoena for the
12 production of documents.

13 THE COURT: All right. I think it's been satisfied at
14 this time.

15 MR. MEARS: I just wanted to make sure that that was a
16 continuing request. And we have not received anything with
17 regard to any of the co-defendants.

18 The exception was the letter which we obtained, a copy
19 of which we obtained from Ms. Lane and the original was
20 produced while Mr. Clark was on the stand. I acknowledge
21 that that was produced. I'm considering that a part of the
22 type of documentary evidence that we were subpoenaing.
23 Other than that we have received nothing.

24 With regard -- And I assume this is what you're, one of
25 the things you're going to take up with what would go out

1 with, with the jury, as concerning the documentary evidence
2 and photographs and things of that nature.

3 THE COURT: Isn't that something we can take up -- I'm
4 more concerned at this time in completing our charge
5 conference prior to the jury getting back at a quarter till
6 3:00.

7 MR. MEARS: That's fine, Your Honor. I just wanted to
8 make sure that -- There are some questions that I have with
9 regard to what should or should not go out.

10 THE COURT: Yes, sir.

11 MR. MEARS: Even though it might have been admitted
12 subject to objection, it still -- I think there has to be a
13 determination of whether it goes out with the jury.

14 THE COURT: Yes, sir.

15 MR. MEARS: Okay.

16 THE COURT: All right, gentlemen, are you ready to
17 address the requests to charge?

18 MR. HARDY: Yes, sir.

19 THE COURT: Now, gentlemen, let's start with -- I
20 believe the State has submitted one proposed request to
21 charge; is that correct?

22 MR. MITCHELL: May we have a moment, please, Your
23 Honor?

24 THE COURT: Yes, sir.

25 MR. MITCHELL: We'll submit it without argument.

1 THE COURT: All right, sir.

2 MR. MEARS: Which one are you submitting?

3 THE COURT: Parties to the crime.

4 MR. MITCHELL: Parties to the crime.

5 MR. BRYANT: Did we get a copy of that? I don't think
6 that we got a -- Did we get a copy?

7 MR. MITCHELL: I thought we served it on them.

8 MR. MEARS: Is it just a standard parties to a crime --

9 MR. MITCHELL: It came right out of the pattern jury --

10 THE COURT: There is a certificate of service.

11 MR. MEARS: We probably, probably did. If we didn't, I
12 think we're all aware of what that charge is.

13 THE COURT: There's a certificate of service attached
14 dated September the 2nd of this year.

15 No objections?

16 MR. MEARS: I want to reserve all of my objections to
17 the charges until such a time as there is a motion for a new
18 trial or an appellate review of the decision, Your Honor, if
19 I may do that.

20 THE COURT: All right, sir. Gentlemen, I think the
21 charge would be applicable, at least insofar as counts five
22 through eight in this particular matter.

23 MR. MEARS: Your Honor, my, my wish to reserve charges,
24 excuse me, as the Court knows it, it -- I probably don't
25 have the charge -- but I want to reserve objections to the

1 Judge's, to Your Honor's charges, all of them, until such
2 time as there's a motion for a new trial or an appeal in
3 this case. May I do that?

4 THE COURT: Yes; you may. And I'll give you an
5 opportunity after, in fact, the jury is charged to interpose
6 any objections or, you know, reserve your right to state any
7 objections, motion for a new trial, or appeal of the matter.
8 I'm simply at this time looking for some direction from
9 Counsel as to what they think, based upon their professional
10 experience and training, is or is not appropriate under the
11 law and the evidence in this case at this date and time.

12 MR. MEARS: I would like to do that, Your Honor, and I
13 certainly will with the understanding that I'm not waiving
14 my right to reserve objections at some later time.

15 THE COURT: Yes, sir.

16 All right. The Court would intend to give party to a
17 crime.

18 All right. Defendant's requests to charge. Number
19 one, Mr. Mears, that's a general charge on indictment and
20 plea, not being evidence. I would intend to give that.
21 Number two, any objection? Let me ask this. Does the State
22 have any particular ones -- you've had an opportunity to
23 review all of the requests to charge submitted. And,
24 gentlemen, at this time we're speaking of requests to charge
25 in regards to the guilt-innocence phase. Have you had time

1 to review all of them that were submitted?

2 MR. MITCHELL: Judge, I've read all of them and made
3 some notes on them, Judge.

4 THE COURT: Let me know which specific ones you have an
5 objection to.

6 MR. MITCHELL: A lot of it looks like it's the
7 pattern's instructions. I do have some questions with
8 respect to, on number two, with respect to what's under
9 moral certainty.

10 THE COURT: Gentlemen, I don't know that --

11 MR. MITCHELL: I thought the Supreme Court says we're
12 not supposed to talk about that any more.

13 THE COURT: I, I'm assuming that I'm not being
14 requested to charge that language in those two paragraphs.

15 MR. MEARS: I put the -- That is directly from the, I
16 believe, from the Superior Court Judges' Requests to Charge.
17 That's what we -- I just took the whole charge as it was
18 presently published in the Judges' Charge Book.

19 THE COURT: All right. Gentlemen, I'll -- as to number
20 two, I'm going to give the general charge on presumption of
21 innocence, burden of proof, reasonable doubt. I do not
22 intend to give the language contained in these two
23 paragraphs on the second page of that following the, the two
24 words which are in bold "Moral Certainty".

25 Mr. Mitchell, any other specific ones that you -- Or

1 what are the others that you specifically have a question
2 about?

3 MR. MITCHELL: Judge, now just because I put a question
4 mark on it doesn't necessarily mean anything except that I
5 just wasn't sure. I put a question mark on number twelve,
6 but I think that may be right out of the pattern jury book.

7 THE COURT: All right. Are we going numerically?

8 MR. MITCHELL: Number three, I think is a pattern
9 charge.

10 THE COURT: Yes, sir. I would intend to give a general
11 charge in regards to the subject matter of number three.

12 MR. MITCHELL: I believe that number four is right out
13 of the pattern charge book.

14 THE COURT: The same as to number four.

15 MR. MITCHELL: I believe number five is.

16 THE COURT: The same as to number five.

17 MR. MITCHELL: Number six is.

18 THE COURT: The same as to number six. I think five
19 and six overlap a bit, but I'll give the general charge
20 that'll cover all of that subject matter.

21 MR. MITCHELL: Number seven is.

22 THE COURT: Yes, sir.

23 MR. MITCHELL: Number eight is standard. Number nine
24 is standard with regard to expert witnesses.

25 THE COURT: I'll give the general charge as to seven,

1 eight and nine.

2 MR. MITCHELL: Number ten is a standard pattern charge.
3 And number eleven is just a definition of direct and
4 circumstantial evidence.

5 THE COURT: I'll give general charges in regards to the
6 subject matter contained in both ten and eleven.

7 MR. MITCHELL: I think twelve is too, but I put a
8 question mark by it.

9 THE COURT: Number twelve, the two equal theories rule
10 has been found to be an improper statement of the law, so
11 the Court will not give that charge.

12 MR. MITCHELL: I guess that's why I put a question mark
13 by it.

14 THE COURT: It may be.

15 MR. MEARS: Your Honor, there still needs to be some
16 situations where the two equal theories would apply. That's
17 the reason I've submitted it. It's been held that it's not
18 error for the Court not to give it. There's been some
19 condemnation of the charge. I simply think that there still
20 may be some case out there where the two equal theories
21 would be appropriate and that's why I've submitted it.

22 THE COURT: I think that will be sufficiently covered
23 in the circumstantial evidence charge.

24 MR. MITCHELL: Thirteen, I think, is a correct
25 statement.

1 THE COURT: Gentlemen, I would intend, insofar as
2 thirteen, that is a portion of the general charge as
3 regarding impeachment of witnesses. Of course, I would
4 intend to give the entire general charge in regards to
5 impeachment of witnesses. I don't mean -- When I say the
6 entire general charge, there are, you know, "A", "B", "C",
7 "D", whichever ones are appropriate under the evidence in
8 this case insofar as --

9 MR. MEARS: Your Honor, will we be denied -- Can we
10 argue this portion of it separately as it's given?

11 THE COURT: Certainly.

12 MR. MITCHELL: And I believe they requested the entire
13 charge on impeachment as part of thirteen because the entire
14 charge --

15 THE COURT: Well, proof of general bad character, I
16 don't know that that's applicable in this particular matter.
17 There's been no, no testimony presented, someone's character
18 evidence so to speak, you know, I know his reputation,
19 wouldn't believe him or her. I think "A" is applicable,
20 disproving the facts which have been testified to. "C" is.
21 And "D" is, I believe.

22 MR. MITCHELL: Fourteen is also part of that.

23 THE COURT: General charge on fourteen likewise.

24 MR. MITCHELL: Fifteen, I don't think we've given
25 anybody immunity. I'd submit that to the Court's

1 discretion, but I don't think we've given anybody a grant of
2 immunity in the technical sense of that.

3 THE COURT: Well, I agree that you haven't in the
4 technical sense. But, you know, part of the language of
5 this charge states, or as a result of a negotiated plea in
6 which leniency may be inferred. I will give that charge.

7 MR. MITCHELL: I'm not sure if there's any evidence to
8 support sixteen, but it's a package statement of the law. I
9 mean, with regard to --

10 THE COURT: There's no evidence to --

11 MR. MITCHELL: I don't think there's any evidence to
12 support it, but I just mean, it's a correct statement of the
13 law.

14 THE COURT: It's a correct statement of the law. There
15 is no evidence to support that in my opinion at this time.

16 Do you disagree? Are you going to reserve any
17 disagreement?

18 MR. MEARS: Your Honor, I don't think I will.

19 THE COURT: I think it's also incomplete.

20 MR. MEARS: I would disagree but I'm still going to
21 submit it for consideration of the Court, Your Honor.

22 THE COURT: I will not give number sixteen. It's an
23 incomplete statement of the law and it's also not supported
24 by the evidence.

25 Seventeen, will give, certainly give the general

1 charge, accomplice testimony.

2 MR. MITCHELL: As to eighteen, I don't think there's
3 any evidence to support -- I don't know that there's really
4 any evidence to support a criminal negligence charge, of
5 criminal negligence.

6 THE COURT: No, sir; I don't believe there is. I would
7 not intend to give that charge.

8 Number nineteen, does the Defendant still --

9 MR. MITCHELL: We have no objection to that.

10 THE COURT: -- the Defendant still wish for the Court
11 to give number nineteen?

12 MR. MEARS: Yes; I do, Judge.

13 THE COURT: The Court will do so. Twenty?

14 MR. MITCHELL: I believe that's, I believe that's a
15 pattern charge. I'm not sure if it's complete but I believe
16 that's a pattern charge on identification.

17 MR. MEARS: It came off the disk. I think it came off
18 the disk pattern charge. I think it's at least
19 substantially the pattern charge. It may well be --

20 THE COURT: I'm not questioning whether it's the
21 pattern charge or not. I'm just running through my mind --
22 We've got no, no testimony from any witness insofar as, with
23 the exception of co-defendants saying, you know, "Mr.
24 Cromartie was there". He was with", I mean, "We know him.
25 He was there. He was with us". It's not like you've got

1 Mr. Seitz across the street saying, "I saw him run out of
2 the store and, yes", you know, "in my opinion, this was the
3 man". Or Mr. Watson or Mr. Whomever, or Mr. Taylor or
4 whomever was with him, and "We saw them run out and", and,
5 you know, "I think this is the man". I don't know that
6 identification, the charge on identification is appropriate
7 or, or required in this particular case.

8 MR. MEARS: Well, Judge, normally this charge is given
9 when you have a Jackson-Denno situation where there's been a
10 determination -- not Jackson-Denno. I'm sorry. When you've
11 had an out of court identification, either a photographic
12 lineup or a show, showup of some type. I acknowledge that's
13 normally when you would request this particular type of
14 charge. However, in this particular instance we've got at
15 least three witnesses, two of whom have testified, and one
16 has testified by proxy, as to identifying individuals coming
17 from the store. We also have this videotape --

18 THE COURT: We've got descriptions. We've got no
19 identification.

20 MR. MEARS: I acknowledge that, Judge. But the
21 inference that the State is asking the jurors to draw, since
22 Mr. Cromartie is the only person on trial, is that he was
23 one of those individuals. They also, at the Madison Street
24 Deli, they put up the videotape that only had one
25 perpetrator there, the obvious inference being that the

1 State wouldn't have put it up if they hadn't been asking the
2 jurors to make the identification. And I would ask the
3 Court to give this charge.

4 THE COURT: All right, sir. There being no objection,
5 I'll give the charge. It'll be the general charge on
6 identification, Mr. Mears. And this may be it.

7 MR. MEARS: Yes. Thank you.

8 THE COURT: Twenty-one, attempt, attempted armed
9 robbery.

10 MR. MITCHELL: I'm not really sure that's authorized by
11 the evidence. You know, I think what we've got here is
12 going to be the completed offense or no offense.

13 THE COURT: I don't see that it's adjusted to the
14 evidence. If, if in counts one through four or the deli
15 incident, you know, that, that could arise to an attempted
16 armed robbery, but I just don't see it in this case.

17 MR. MITCHELL: Well, he's charged with aggravated
18 assault with intent to rob.

19 THE COURT: That's what I'm saying. He's not charged
20 with, with armed robbery insofar as the deli incident. I
21 just don't think it's applicable in this case. He's
22 charged, insofar as the deli incident, Aggravated Assault,
23 Aggravated Battery, two counts of Possession of a Firearm
24 During the Commission of a Crime. He's not charged with
25 Armed Robbery, Robbery, Attempted Robbery.

1 MR. MEARS: I'm sure I had a good reason for asking
2 that. If the Court will give me just one minute I'll try to
3 come up with it.

4 The best I can do, Judge, is that the jurors might be
5 able to determine that it was an attempted armed robbery at
6 the Junior Food Store.

7 THE COURT: All right, sir. The Court will not give
8 number twenty-one. Number twenty-two, again --

9 MR. MITCHELL: Judge, once again, I, I think that the
10 evidence we have will show either the completed, the
11 completed offense or no offense on behalf of the Defendant,
12 so I'm not sure that the abandonment of the criminal
13 enterprise would be appropriate under the evidence.

14 THE COURT: All right, sir.

15 MR. MEARS: I don't disagree, Judge. I'm still
16 reserving --

17 THE COURT: I understand. I do not think that it's
18 appropriate under the evidence in the case at this time and
19 will not give twenty-two.

20 Twenty-three, I'll give that general charge.

21 Twenty-four, give that general charge.

22 Twenty-five.

23 MR. MEARS: I'd like for that one to be given, Judge.

24 THE COURT: All right, sir. Twenty-six.

25 MR. MITCHELL: Judge, I've got some question about some

1 of the language in twenty-six, more especially the last
2 couple of paragraphs. Those concern -- I'll submit it to
3 the Court's discretion. I'm not sure if that's -- I didn't
4 compare these against the pattern charge book, but --

5 MR. MEARS: I think it's from the charge book.

6 MR. MITCHELL: It probably is. I don't know. I'll
7 submit it.

8 THE COURT: Gentlemen, in looking at this particular
9 charge, it may, in fact, be out of the pattern charge book.
10 However, I know there's case law that states, you know,
11 there's some, been some charges in the past in regards to
12 fingerprints, states, it's kind of like the circumstantial
13 evidence charge or two theories charge, that if it's, if the
14 fingerprint evidence is the sole evidence in the case, and
15 if there's another reasonable theory as to how the
16 fingerprint got there at some time other than the time the
17 crime was perpetrated, then it's not sufficient to convict.

18 MR. MEARS: Your Honor, I think there's certainly
19 testimony that would support paragraph two. Not -- I
20 understand what the Court's saying. But with regard to
21 paragraph --

22 THE COURT: I intend to give a portion of the charge.
23 I think a portion of it is certainly justifiable.

24 MR. MEARS: What about the second paragraph from the
25 bottom of the first page, Judge?

1 THE COURT: Second from the bottom?

2 MR. MEARS: Yes, sir. Are you going to give that?

3 THE COURT: I don't know that there's been any evidence
4 introduced that they could have been left at a different
5 time.

6 MR. MEARS: Yes, Your Honor. I asked -- When I asked
7 Mr. Hutchinson did he have any way of determining the time
8 when the fingerprint would have been on the beer carton and
9 we went through, I guess, three or four series of questions
10 about there's no way to determine the time, assuming that it
11 was Mr. Cromartie's fingerprint on the beer carton, there's
12 no way to determine when it was placed there. He tested --
13 and that's --

14 THE COURT: Well, I understand the fact that, you know,
15 -- it could have been left at some other time doesn't mean
16 that there's evidence that it was left at some other time.

17 MR. MEARS: I don't think the Defendant has to show,
18 you know, in requesting that particular application of law.
19 I think that that's an inference that jurors can draw from
20 the testimony, that it's a public place. It's not like a
21 private place where he would not have been expected to be
22 there. There are any number of factors that an individual
23 could come and go in a public place. And the jurors, I
24 would submit, Your Honor, may infer from the fact that it
25 was a public place he could have been there before.

1 THE COURT: All right, sir.

2 MR. MEARS: Will you give that, at least that portion
3 of it in addition to the other parts?

4 THE COURT: In addition to which other parts? What's
5 above that?

6 MR. MEARS: Yes, sir.

7 THE COURT: Yes, sir.

8 MR. MEARS: Can I argue that fingerprints are a type of
9 circumstantial evidence? I understand you're not going to
10 give the last paragraph, if I understood it correctly.
11 However, can I argue that the fingerprints are, that
12 fingerprint is a type of circumstantial evidence and in --
13 because you're going to charge them on how to handle
14 circumstantial evidence.

15 THE COURT: Any response, gentlemen?

16 MR. MITCHELL: Well, Judge, I think a lot of this goes
17 to where it's a one hundred percent circumstantial evidence
18 case. That circumstantial evidence alone must exclude every
19 other reasonable hypothesis except the, save the guilt of
20 the accused. I mean, that's a correct statement in a one
21 hundred percent circumstantial evidence case. But that's
22 not what we've got. We have direct evidence and
23 circumstantial evidence.

24 THE COURT: I'm speaking of his last statement, where
25 he wants to argue to the jury that it's circumstantial

1 evidence. That's all I'm addressing.

2 MR. MITCHELL: Judge, I mean, I guess he can argue any
3 theory in closing argument --

4 MR. MEARS: Well, I, I acknowledge the Court was not
5 going to give the second part. I mean, I understood that's
6 where you were going. What I wanted is not to be precluded
7 or at least not to have an objection made when I'm arguing.
8 Not that I'm going to read this or argue this paragraph, but
9 they can consider fingerprints as a form of circumstantial
10 evidence. I wasn't going to argue this portion of it that
11 says you have to exclude every other reasonable hypothesis.
12 You're right, that is in only circumstantial cases. And all
13 I'm asking is, can I simply make reference to fingerprints
14 as an item of circumstantial evidence. It's not direct
15 evidence in other words.

16 MR. MITCHELL: I don't know of any reason why that'd be
17 an improper argument, Judge.

18 THE COURT: Yes, sir. All right, gentlemen, the next
19 proposed request to charge, robbery by intimidation. Now, I
20 understand the statute which says that robbery by
21 intimidation is a lesser included offense of armed robbery.
22 But, in this particular case, based upon the evidence in the
23 case, there, there is no evidence whatsoever from which the
24 jury could infer that anything was done by any individual at
25 the Junior Food Store to intimidate, frighten or scare Mr.

1 Slys insofar as taking of the property. I don't know if
2 the State has any -- I should have asked the State first
3 whether or not they have any particular position on it. But
4 I just --

5 MR. MITCHELL: Judge, that'd be the State's position,
6 what the Court just stated. We don't think there's any
7 evidence to support the charge of a lesser included offense.

8 THE COURT: I just don't -- Any response?

9 MR. MEARS: Your Honor, I don't have any, I don't have
10 anything to add other than we would like, we would ask the
11 Court to consider giving robbery by intimidation as a lesser
12 included offense considering the totality of the evidence
13 that's been presented in this case.

14 THE COURT: All right. Thank you. Gentlemen, I think,
15 again, based on the totality of the evidence, I think it's
16 inappropriate. It's simply not adjusted to the evidence.

17 Theft by shoplifting.

18 MR. MEARS: Well, as -- this may seem like a stretch at
19 first blush, Your Honor, but it's not, because if, if the
20 jurors were to apply the theory of mere presence at the
21 scene of a felony doesn't automatically make you guilty of
22 that felony. If they were to infer that, for instance, Mr.
23 Cromartie was there and was shoplifting the beer and someone
24 else did a felony which he was not a party to but a mere
25 presence there, then they could be authorized to find him

1 guilty only of shoplifting.

2 THE COURT: I don't think that's a logical and
3 reasonable inference under the evidence. I think -- it's
4 either there and did it or there and a party to the crime or
5 was not there.

6 MR. MEARS: I acknowledge that, that factually -- and
7 I'm not meaning to diminish by asking for a shoplifting
8 charge. I'm not meaning to diminish the seriousness of the
9 crime in any way. I'm simply trying -- I was trying to put
10 myself in the minds of the juror who might be looking for
11 some areas that they could, and felt the evidence warranted
12 it, find him guilty of a particular crime but not guilty of
13 armed robbery or murder.

14 THE COURT: Yes, sir. Are those the same arguments in
15 regards to the request for charge on simple assault, theft
16 by taking?

17 What is the State's position?

18 MR. MITCHELL: Your Honor, our position would be that
19 the evidence as framed shows the completed offenses or no
20 offense, would be our position, and that the charges on
21 lesser included offenses would therefore be inappropriate.

22 THE COURT: Okay. I think the law is now that even if
23 all of the evidence presented by the State shows, or would
24 be sufficient for the jury to find a completed offense, say
25 armed robbery, if the evidence also authorized the jury to

1 find a lesser included -- the evidence authorized the jury
2 to find a lesser included offense, then it's error for the
3 Court not to charge that. Alvarado versus the State, et
4 cetera. But in looking at Alvarado and some subsequent
5 cases, I'm satisfied there's got to be, to be evidence
6 presented for the jury to, to find the lesser offense. And
7 at this time I don't think there's been sufficient evidence,
8 I don't think there's been any evidence presented for the
9 jury, so that the jury could find, or support a finding of
10 theft by shoplifting, theft by taking, simple assault.

11 MR. MEARS: Your Honor, could I address that just
12 briefly. I think that one of the reasons that I would ask
13 the Court to consider this, as I know you are very
14 carefully, because there's a certain burden shifting element
15 in not giving some lesser included offenses on the basis
16 that there's been no showing of theft by taking, there's
17 been no showing of simple assault. I think that there is an
18 element that would, where that could be construed as
19 shifting the burden to the Defendant to show evidence of a
20 lesser included offense. And I think that was the dilemma
21 that, at least, I interpreted from some of the cases leading
22 up to the most recent case that said it's error if there's
23 any evidence at all of a lesser included offense, the charge
24 should be given. I interpret it, and I'm certainly no
25 scholar in this area, but I think I interpreted that as the

1 Court being very concerned about the shifting of the burden
2 to the Defendant to show that he's not guilty of armed
3 robbery but guilty of, of something else. It's almost like
4 making it an affirmative defense where, you know, the
5 Defendant says, I'm not there, and you raise the alibi
6 defense, then it's considered an affirmative venture. In
7 order to sustain an alibi you've got to go forward, I
8 believe. It's been so long since I've had an alibi defense,
9 I'm not sure. But I believe you've got to show at that
10 point as an affirmative defense some evidence to support
11 that affirmative defense. Lesser included offenses, Your
12 Honor, I think, fall into a different category and set a
13 really fine line between shifting the burden to the
14 Defendant to show that he, he or she did a lesser included
15 offense rather than one for which they were indicted. And I
16 would ask the Court to consider that argument when making
17 its decision as to whether or not to submit the lesser
18 included offense charges to the jury.

19 THE COURT: All right, sir. Mr. Mears, I, I will
20 consider the argument, considered it while you've argued it.
21 I still think, you know, to charge on affirmative defense
22 there has to be the evidence in the case as to the
23 affirmative defense, whether, whether put in by the State or
24 the Defendant or otherwise. This case, in my opinion,
25 there's no evidence at this time supporting a charge on

1 theft by shoplifting or theft by taking or simple assault.

2 MR. MEARS: I, I understand the Court's ruling. I
3 simply want to -- I'm urging the Court to consider that
4 because I think to do otherwise shifts the burden to him.
5 And I realize that it's a very fine line, but I think it's a
6 very important line because affirmative defenses have been
7 legislatively recognized, I think, and judicially recognized
8 whereas lesser included offenses are a judicial process has
9 been made primarily by, by decisions of the Court.

10 THE COURT: Yes, sir.

11 MR. MEARS: I think there's a distinction there and
12 that's what I'm asking the Court, and I know you're
13 considering that right now.

14 THE COURT: All right, sir. Twenty-eight will not be
15 given. Twenty-nine will not be given. Thirty.

16 MR. MITCHELL: Judge, I don't think that felony murder
17 is a lesser included offense of malice murder, and I don't
18 know -- because he hasn't been indicted for that particular
19 -- I mean, it seems to me like that's a collateral offense.
20 I don't know how you can find somebody guilty of felony
21 murder when they're only indicted for malice murder. And I
22 don't think it's a lesser included offense. I think
23 they're, they're collateral, if the Court understands my
24 theory. I don't think the jury can, can find him guilty of
25 something that he wasn't indicted for that's not a lesser

1 included offense of what he's charged with.

2 THE COURT: Anything else?

3 MR. MITCHELL: No, sir.

4 THE COURT: All right. I don't know that felony murder
5 is a lesser included offense if you look solely to the
6 possible punishment. The possible punishment is the same.
7 Some of the appellate court decisions talk about, well, a
8 lesser, culpable mind or something of that nature. I don't
9 really necessarily understand all of that. I do believe
10 that based upon the case of Henry versus State, 265 Ga., 732
11 that this indictment as drawn and the evidence as presented
12 does not warrant a charge on felony murder. I'll be happy
13 to, to entertain argument otherwise and to look at any, any
14 other authority the Defense may have in regards to that
15 particular request.

16 MR. MEARS: Your Honor, I think that Georgia is
17 somewhat unique in that the statute combines felony murder
18 with malice murder and makes it very difficult for both
19 prosecutors, Defense attorneys and Judges, to ferret out the
20 distinction between the two, because malice -- it's labeled
21 homicide. Then within that homicide statute there's two
22 different forms of homicide which aren't really divided by,
23 by code sections. That's what makes it extremely difficult
24 for me to argue that it's not a lesser included offense
25 because of the, the intentionality that's required in malice

1 murder. And, here again, Georgia is very strange in this
2 particular regard because intention and malice are equated
3 as being the same thing, according to the case law. Malice
4 equals intention and intention equals malice. You can be
5 convicted of felony murder without the element required to
6 prove malice murder. That's where I believe, Your Honor,
7 that it's a lesser included offense. You can be convicted
8 of felony murder, in other words homicide, without having
9 intended to cause the death of another human being if you
10 intended any one of the number of specified felonies that
11 would fall in that category. There have been very few that
12 have been excluded from that category. So I think -- just
13 to say the armed robbery -- the reason robbery is a lesser
14 included offense of -- robbery is a lesser included offense
15 of armed robbery is because one of the elements of armed
16 robbery is not present in robbery. That is, the possession
17 of an offensive weapon or threatening weapon. So that's
18 why, as I understand it, that's why robbery is a lesser
19 included offense of armed robbery. And on down the line the
20 other lesser included offenses. There's always some one or
21 two elements of the more severe crime not present in the
22 less severe crime. That's what makes it lesser included,
23 because all of the elements aren't there.

24 The same principle should apply to the murder statute.
25 One of the elements that's not present in felony murder,

1 that is intention, is present in malice murder. So if you
2 have malice murder but, or at least a murder that doesn't
3 have intention, the next, the next level of offense
4 involving a homicide would be felony murder. So I think it
5 would be appropriate to charge, I think it would be required
6 to charge upon request that felony murder -- See, for
7 instance, if the jury decides that Mr. Cromartie was present
8 at the scene and if the jury decides his mere presence is
9 not sufficient to absolve him of any guilt, but they decide
10 that Corey Clark did the shooting, and that's certainly
11 something that this jury could infer from the facts in this
12 case, Mr. Cromartie could still be convicted of the offense
13 of felony murder should the jury find that that was the
14 appropriate sentence, even though Mr. Corey Clark pulled the
15 trigger, or Mr. Thaddeus Lucas or Mr. Gary Young, whoever
16 they decide might have been there. Therefore, the facts in
17 the case and the law certainly would be appropriate, would
18 be appropriate in this particular instance for a charge of
19 felony murder. And I think it would be very important for
20 the Court to give this particular charge considering the
21 jury could find that someone else pulled the trigger, even
22 if they find that Mr. Cromartie was there. And I would, I
23 would urge the Court to, to give the charge on felony murder
24 as a lesser included offense. And we, we've talked about
25 the effect of punishment. I think that's a different

1 argument. But as far as the finding of this jury, I would
2 urge the Court to consider giving the charge of felony
3 murder based upon the fairly inarticulate argument that I've
4 tried to give the Court. Thank you.

5 THE COURT: All right. Thank you, sir.

6 All right. Ladies and gentlemen, again, for the
7 reasons stated, I don't feel like that that charge is
8 appropriate in this particular matter.

9 I believe we've already addressed thirty-one. Is that
10 correct?

11 Thirty-two.

12 MR. MITCHELL: Judge, I believe the undisputed evidence
13 was the man was, the man was shot while he was holding a
14 pencil in his hand doing his books. There's absolutely no
15 evidence of any provocation.

16 MR. MEARS: I really don't dispute that, Your Honor.
17 However, there is an element here where the victim, and I'm
18 certainly not questioning the fact that he was -- it was a
19 terrible crime. He was wearing a weapon. There's a
20 possibility that the jury could infer that the presence of
21 that weapon that he was wearing, that there was provocation
22 of some type to cause whoever shot him to do it. I'm asking
23 that the Court consider voluntary manslaughter on that basis
24 and that basis alone.

25 THE COURT: Okay. Mr. Mears, I don't believe there's

1 any evidence to make that inference. From the simple fact
2 that the victim may have had, may have been armed does not
3 in and of itself raise the inference that, that he may have
4 done something to provoke the attack upon him. I will not
5 give thirty-two.

6 MR. MEARS: I believe we've already dealt with thirty-
7 three.

8 THE COURT: Yes, sir.

9 MR. MEARS: Probably a double, double charge on that.

10 THE COURT: Thirty-four.

11 MR. MITCHELL: I think we've kind of already dealt with
12 that too.

13 MR. MEARS: It was robbery by intimidation.

14 THE COURT: Sir? We've not dealt with robbery yet.

15 MR. MEARS: I thought we dealt with robbery by
16 intimidation.

17 THE COURT: We did.

18 MR. MITCHELL: This is robbery by force. I think the
19 undisputed evidence would be, and I think it's going, once
20 again, Judge, that the evidence shows it's a completed
21 offense or no offense and there was a firearm used in the --
22 which would be clear to be an offensive weapon. I think
23 it's either all or nothing.

24 MR. MEARS: Well, except in this case, Your Honor, the,
25 the State is taking the position that the other two people

1 involved in this crime were guilty of the offense of
2 robbery. They were allowed to plead guilty to robbery.
3 They certainly felt that it was the appropriate sentence for
4 them. Now, they made the determination as to the role of
5 Mr. Clark and the role of Mr. Lucas in this case. The jury
6 is going to have to take, make a determination of what Mr.
7 Cromartie's role was, if any, in this. They could very well
8 determine that his role was the same as theirs, or they
9 could say that one of the other individuals did something
10 else. I think it's very appropriate in this case
11 considering the pleas that the district attorney -- it
12 wasn't a jury determination for something else. It was a
13 determination by the district attorney to allow them to
14 plead guilty to robbery, an accusation of robbery. So I
15 think it would be appropriate to charge this one, Your
16 Honor.

17 THE COURT: All right, sir. Gentlemen, again in this
18 particular matter, the only evidence in regards to the
19 commission of a robbery is that it was done by an offensive
20 weapon. There is no evidence that robbery was accomplished
21 in some other manner, i. e. without an offensive weapon. So
22 in this particular case, again, I don't think that there's
23 evidence to support that lesser included offense.

24 MR. MEARS: Can I make one more argument, Judge?

25 THE COURT: Yes, sir.

1 MR. MEARS: In taking a plea, I, I believe the standard
2 is that the Court has to make a determination that there's
3 sufficient evidence to support the plea. And I believe Your
4 Honor did this with regard to Mr. Clark. And I'm not sure
5 about Mr. Lucas, but I think with Mr. Clark, and I may have
6 them backward, Judge, I, I -- if I do, I'm sorry. There was
7 a sufficient basis in fact based upon their statements. And
8 I know Mr. Clark gave a statement. Mr. Hardy asked him, you
9 know, tell us what happened out there. And, and the Court
10 made a determination that based upon their version of what
11 took place, there was a sufficient basis to support the plea
12 of robbery. And I would ask the Court to make that
13 consideration in determining whether or not Mr. Cromartie
14 should be given the same consideration of the evidence.

15 THE COURT: Thank you, sir. Number thirty-four will
16 not be given.

17 Thirty-five, I believe we've already covered.

18 MR. MEARS: Thirty-six, I believe we've covered.

19 THE COURT: Yes, sir; we have. Will not be given.

20 Simple battery. I believe --

21 MR. MEARS: This has to do with the Madison Street
22 robbery, Your Honor. A lesser included offense of
23 aggravated battery. I'm asking the Court to consider giving
24 that one.

25 THE COURT: All right, sir. Any response?

1 MR. MITCHELL: Judge, once again I -- Judge, once again
2 I think that the evidence would show the completed offense
3 or no offense. I mean, the undisputed evidence is the man
4 was, the man was shot with a firearm in his, and did damage
5 to, his artery was severed. I, I don't think that -- and to
6 tie it off, I don't think that would support contact in an
7 insulting and provoking nature with the person of another.
8 I mean, like, usually it's like, when a man's permanently
9 lost his artery, I, I think the evidence would show the
10 completed offense or no offense.

11 MR. MEARS: The State overlooks subsection B of that
12 particular -- it says, intentionally causes physical harm to
13 another. The jury might consider it. I think they will.
14 It's up to them, not the prosecutors. The jury might
15 consider it. And I'm certainly not taking away the
16 seriousness of Mr. Wilson's injury. But the jury might
17 consider that the elements of aggravated battery had not
18 been proven beyond a reasonable doubt. I remember Dr.
19 Hall's testimony. And, excuse me. Dr. -- yes, Dr. Hall.
20 Dr. Hall's testimony about the ligature involving the
21 carotid artery. I'm not throwing that aside. I'm simply
22 saying that the jurors have a right to choose which
23 witnesses they want to and to add credibility or whatever
24 they want to add to it. And the jurors could well find that
25 all of the elements of aggravated battery had not been

1 proven beyond a reasonable doubt and then subsequently find
2 the individual on trial guilty of the offense of battery
3 rather than aggravated battery. And I would ask the Court
4 to give the charge.

5 THE COURT: All right, sir. Ladies and gentlemen,
6 thirty-seven will not be given.

7 Thirty-eight, I believe we have covered.

8 Thirty-nine is not applicable. Is that correct?

9 MR. MEARS: We get into a real, an issue here, Your
10 Honor, with the handling of the Madison Street Deli robbery
11 and assault, excuse me, the Madison Street Deli assault and
12 at the same time that the, in the same indictment with
13 Junior Food. Granted, the State has withdrawn similar
14 transactions that they provided by notice. My concern is
15 how the Court is going to instruct the jurors with regard to
16 the Madison Street Deli and the Junior Food and not to use
17 the evidence from the Madison Street Deli incident to
18 convict Mr. Cromartie of the Junior Foods. I think that's
19 going to be a real problem in this case. Because if the
20 jurors aren't without some limiting instructions, they can't
21 find Mr. Cromartie guilty of the offense of murder at Junior
22 Foods based upon what happened at the Madison Street Deli.
23 Granted, that's probably what they're going to do but the
24 Court at least has to give them some instructions as to how
25 to separate out each individual element of each and every

1 charge. Each and every count of the indictment has to be
2 determined separately. And I believe that's the law, is
3 that they can't use the Madison Street Deli incident to
4 convict Mr. Cromartie of the murder at Junior Foods. They
5 can use it, if it's a similar transaction, if the Court
6 gives limiting instructions to say, you can use the evidence
7 from the Madison Street Deli if you find it shows motive,
8 you know, modus operandi, opportunity, knowledge, all of
9 those things that are traditionally given in a similar
10 transaction charge. So I think that similar transaction, a
11 similar transaction charge should be given with regard to
12 the Madison Street Deli incident as it relates to the Junior
13 Food incident, because the jurors are going to come back
14 with a verdict form saying guilty, guilty, guilty, not
15 guilty, not guilty, not guilty, or they're not going to be
16 able to find, you know, come to a verdict one way or the
17 other because there's not going to be any way for them to
18 break it down as to what evidence do they use to find Mr.
19 Cromartie guilty of the murder at Junior Foods should they
20 find him guilty.

21 And so the question is, what instructions were created
22 by the Court to guide the jurors' discretion, which is not
23 unfettered, in using the evidence that's been presented to
24 them. So I think the similar transaction charge would be
25 appropriate as it relates to the Junior Food Store, I'm

1 sorry, to the Madison Street Deli as an element of the proof
2 of the commission of a crime at the Junior Food Store.

3 THE COURT: Thank you, sir. Ladies and gentlemen,
4 thirty-nine will not be given.

5 Forty will not be given as requested. There'll be a
6 general charge covering some of that particular matter.

7 Ladies and gentlemen, is that, does that cover all of
8 the requests from the Defense in regards to the guilt-
9 innocence phase?

10 MR. MEARS: Yes, Judge. I believe all the rest of ours
11 had to do, that we submitted, had to do with the possibility
12 of there being a sentencing phase. There may be others
13 depending upon what happens during, what happens during the
14 deliberations here if we get to that point, that I would
15 want the Court to consider at some other time.

16 THE COURT: All right, sir.

17 MR. MEARS: Your Honor, I did submit a request to
18 charge number seventy. It was submitted --

19 THE COURT: Seventy?

20 MR. MEARS: Number, number seventy. Did Your Honor get
21 that? I thought I'd faxed it to Your Honor. We filed it.

22 THE COURT: I got one package of supplemental requests,
23 sixty-one through sixty-nine, is what I have.

24 MR. MEARS: Right. And I believe there was one other
25 one, a number seventy. Did ya'll get that?

1 MR. MITCHELL: We don't have it up here with us.

2 MR. MEARS: I apologize to the Court and the State if
3 they didn't get number seventy, because I --

4 MR. MITCHELL: I think it's the same thing we've
5 already talked about.

6 MR. MEARS: It's impeachment of witnesses. I don't --
7 Could I have just one moment to make sure, Your Honor?

8 THE COURT: Yes, sir. I believe number -- Well, it's
9 an unnumbered -- I've got an impeachment request but it's
10 actually unnumbered. It's between thirteen and fourteen in
11 my package.

12 MR. MEARS: Fourteen, Your Honor, was a short version
13 of impeachment. You got this. It just wasn't numbered; is
14 that correct?

15 Your Honor, may I hand up to the Court a copy of --
16 it's number seventy by number.

17 THE COURT: I believe I've got that. I've got an
18 unnumbered request in my package.

19 MR. MEARS: That should be number seventy, Your Honor.
20 Is that the one?

21 THE COURT: Looks like it.

22 MR. MEARS: That should be number seventy, a copy we
23 got --

24 THE COURT: That's the one we felt like everything --
25 the Court felt like everything was appropriate with the

1 exception of B, proof of general bad character.

2 MR. MEARS: Could I just have that -- I mean, could you
3 just -- I'd referenced it seventy, and I think it's probably
4 in the original file as seventy.

5 THE COURT: All right, sir.

6 MR. MEARS: You did mention bad character and I simply
7 overlooked that when I was going through this. Everything
8 but bad character on what we, what I've marked as number,
9 what I've submitted as number seventy will be given; is that
10 my understanding?

11 THE COURT: I'm going to give the general charge on, on
12 impeachment with the exception of bad character.

13 Any other Defense requests to charge that I have not
14 addressed, guilt-innocence phase?

15 All right. I believe our jury is to be back at a
16 quarter till 3:00. Why don't we -- Would you gentlemen
17 like about ten minutes or so before we get started?

18 MR. MITCHELL: Yes, please, Your Honor.

19 MR. MEARS: Your Honor, we, we still haven't addressed
20 the issue of what can go out with the jury. Are we going to
21 do that after arguments?

22 THE COURT: That's what I had thought I would do. Now,
23 since you're raised the question, if there is something that
24 you specifically need to address so that you can, can say
25 something in argument about, you know, while you have this

1 out -- the reason I brought it up earlier is so we could get
2 through our conference on requests to charge.

3 MR. MEARS: I don't, I don't know of anything that I'm
4 going to make that type of reference to. May I inquire if
5 the State is going to do that?

6 MR. HARDY: Do what now?

7 MR. MEARS: Say, while you have this out you can look
8 at it and --

9 MR. HARDY: I probably will, Judge.

10 THE COURT: That's fine. But, gentlemen, and I'll
11 simply tell you, I do intend to give Counsel an opportunity
12 to raise any objection as to the particular piece of
13 evidence going out, as to whether or not it's continuing
14 testimony, before we send all the exhibits out to the jury.

15 MR. MEARS: One thing that I think that I do want to
16 address then before it's discussed are the still photographs
17 that were made from the videotape. The videotape, as I
18 understand, will not go out to the jury. The jurors can
19 request the replaying of the videotape, if I'm correct. I
20 think that's the law. That they can request it upon notice.
21 The parties would come back in and they can watch the
22 videotape again. I would object to the still photographs of
23 the videotape going out. If the videotape can't go out with
24 the jurors, and I believe that's a correct statement of law,
25 then the frame, individual frames from that videotape should

1 not go out either.

2 THE COURT: Do you have any authority?

3 MR. MEARS: My only authority -- Well, no; I don't,
4 Judge, other than the fact that I think it's inappropriate.
5 Otherwise, you circumvent the rules of evidence. Every
6 videotape you have, you just have a frame of, still
7 photograph made of each frame and send it out. And, as a
8 matter of fact, that might be a good idea, may be a way to
9 get around it. But I don't think that's the law now and I
10 think it, it circumvents the, the law against letting the
11 videotape go out.

12 THE COURT: All right, sir. If you would tell the
13 jurors that we're going to probably be about another fifteen
14 minutes, another fifteen minutes apparently.

15 MR. MEARS: Has the Court ruled on that?

16 THE COURT: I was waiting to see if the State had any
17 response.

18 MR. HARDY: Your Honor, we think the still photographs
19 are just like any other photographs. And that's the rule
20 unless there's been a case over the last year or so saying
21 that still photographs made from videotapes are just like
22 any other picture, whether or not they're fair and accurate
23 representations.

24 THE COURT: Well, I know there's been, there has been a
25 case in regards to enlargements of still photographs made

1 from videotape, et cetera, et cetera. Insofar as its
2 admissibility, do you know -- either one of you gentlemen
3 have any authority on whether or not those particular
4 photographs would fall under the category of continuing
5 testimony?

6 MR. MEARS: I don't know, Judge. I'm not -- I'm
7 certainly not going to represent to the Court that it, that
8 it falls under the rubric of continuing testimony. I don't
9 know of any case. There may well be but I just don't know
10 it and I can't cite it to the Court. My, my argument in, in
11 addition to the general principles of fairness is that the,
12 allowing the videotape to be reproduced in the form of still
13 photographs, certainly you can use them for demonstrative
14 purposes and you can use them to call the jurors' attention
15 to particular frames of the videotape, but to reproduce it
16 frame by frame, then send it out, and this is basically
17 three different forms of the same frames, so you're getting,
18 the jurors have got three different versions of each frame
19 in that twenty-two minute segment -- the twenty-two second
20 segment. And that's all it is, is twenty-two seconds and
21 they've got every frame photographed. And I think it, it
22 simply circumvents the rules against letting the videotape
23 go out, and I would object to it.

24 THE COURT: All right, sir. Gentlemen, at this time I,
25 I feel like the rule in regards to the videotape going out,

1 generally is directed at audio portions of the tape. It's
2 like we don't send out the micro cassette tape for them to
3 play and listen to, et cetera, because it'd be continuing
4 testimony, kind of like a transcript or something of that
5 nature. I don't think that, that the videotape portion and
6 especially the still photographs produced from the video
7 portion fall into that particular prohibition. So that
8 objection is overruled. They do go out.

9 Anything else, gentlemen?

10 MR. MEARS: Does that mean Mr. Hardy wins?

11 THE COURT: It's yet to be seen, yet to be seen.

12 MR. MEARS: I understand, Judge. I, I think I may --
13 I've clearly made my objection to that. If possible, I'm
14 going to continue to do some real quick research and see if
15 I can come up with anything. Would you allow me, if I do
16 find something, to bring it to the Court's attention?

17 THE COURT: Yes, sir.

18 All right. Gentlemen, let's --

19 MR. MEARS: The indictment -- Is the Court going to
20 send this indictment out with the jury?

21 THE COURT: Are you talking about the original
22 indictment?

23 MR. MEARS: Yes, Your Honor.

24 THE COURT: Yes, sir. I had -- Unless there is
25 something on it --

1 MR. MEARS: It has the punishment on the, under the
2 charges, Your Honor. Quite frankly, I've never seen
3 indictments drawn where the minimum and maximum punishment
4 for offenses is included on the indictment. Since this jury
5 is not to concern itself with punishment, I think it would
6 be inappropriate for that to go out. I would ask the Court
7 to just let us submit a jury form and not send the
8 indictment out. The indictment is not evidence. The Court
9 will charge them it's not evidence. As a matter of fact,
10 North Carolina, not that it's binding on this Court, has a
11 statute that says you can't send it out.

12 THE COURT: I'm aware of it. Mr. Mears, I'll be happy
13 to -- I would intend to send the indictment out. I'll be
14 happy to, insofar as that front page, to have the Clerk make
15 a copy of the front page, white out where the State has, or
16 where the possible punishments have been typed in, and then,
17 you know, copy it one more time and substitute that copy for
18 this face of it.

19 MR. HARDY: Will there be a verdict form?

20 THE COURT: I've got one right here for you gentlemen
21 to look at.

22 MR. MEARS: Your Honor, subject to my overall
23 objection, I appreciate you doing that.

24 THE COURT: Yes, sir. I've also got some -- it would
25 be premature to look at at this time. What I, you know, in

1 my charge, Mr. Mears, I charge them et cetera, et cetera, et
2 cetera, and I basically charge them that if they find that
3 the Defendant's guilty, they write in guilty. If they find
4 him not guilty, they write in not guilty, as to the specific
5 counts.

6 MR. MEARS: Your Honor, with regards to the possession
7 of a firearm, I -- they have to find a predicate offense
8 first before they can find the possession of a firearm
9 during the commission. Now, do you give instructions as to
10 use --

11 THE COURT: I believe that I will.

12 MR. MEARS: Okay. If you could, I think that would,
13 may help them. They have to find that an armed robbery
14 occurred before they could find the possession of a firearm.

15 THE COURT: And if they find him guilty of --

16 MR. MEARS: Aggravated, I think it's aggravated assault
17 and aggravated battery at the Madison Street Deli.

18 THE COURT: If they find him not guilty of count one
19 and find him guilty of count two, then count two isn't going
20 to stand up anyway.

21 MR. MEARS: That's right. You've got an inconsistent
22 verdict. Okay. Thank you.

23 THE COURT: Otherwise, is this, is this verdict form
24 satisfactory, gentlemen?

25 MR. HARDY: Yes, sir.

1 MR. MEARS: It is, Judge.

2 THE COURT: Let me address one other thing real quick.
3 Gentlemen, insofar as the Unified Appeal Procedure, Section
4 3-A-2, we've already addressed 2-A, written requests to
5 charge. We've already -- Are there any other matters that
6 need to be ruled on at this particular time insofar as
7 matters that arose during the trial, evidentiary or
8 otherwise?

9 MR. MEARS: I think we've got -- Nothing other than,
10 Your Honor, we would renew all objections to the evidence
11 previously made hereto on the grounds that were stated
12 contemporaneous with the raising of the objections. We
13 would raise those objections again with regard to the Motion
14 for a Mistrial and the renewal of the Motion for mistrial
15 after curative instructions. We would renew that at this
16 time. Given that I have, I don't know of anything else we
17 need to raise pursuant to the Unified Appeal or pursuant to
18 the Rules of Procedure. And I simply restate, renew all of
19 those at this point.

20 THE COURT: All right, sir. Mr. Mears, I will renew my
21 previous rulings on all objections and all motions of the
22 Defense in those regards.

23 Gentlemen, are you aware of any other motions or
24 objections that need to be presented? I think you have just
25 covered that.

1 MR. MEARS: Judge, would you look at subsection D? Mr.
2 Bryant has made a good point. It's under Rule III of the
3 Unified Appeal, under D.

4 THE COURT: Are you speaking of after charge of the
5 Court?

6 MR. MEARS: After the -- That's just before that. It's
7 Rule D, under 2, D, I'm sorry.

8 THE COURT: 2, D?

9 MR. MEARS: Rule III, 2, D.

10 THE COURT: Yes, sir.

11 MR. MEARS: Could we have explicit permission to
12 reserve objections to the State's closing argument until
13 after the closing argument is made? In other words, if
14 we -- and I, I, very rarely do I ever object during the
15 closing argument at the guilt-innocence phase of a trial
16 like this.

17 THE COURT: Mr. Mears, I don't have any, any problem
18 with that off the top of my head with the exception -- I'm
19 not going to put this case in a position of, if there's an
20 objection and, and the Court were to sustain the objection,
21 and the Court by admonishing the attorney or otherwise
22 instructing the jury could satisfy any prejudicial effect to
23 the Defendant or otherwise, what otherwise might be
24 considered some, some error on the part of the State in
25 making such an argument, I don't want to put the Court in

1 this case in a position of, of not being able to cure
2 whatever you might consider to be improper argument. So,
3 insofar, if you're willing to -- it's almost to the extent
4 of asking you to, to waive -- I don't want to -- I guess --
5 I hope I'm making myself clear. I don't want to be in a
6 position of waiting until after the State presents its
7 argument and then you state an objection that I otherwise
8 could have cured during the argument. Do you understand?

9 MR. MEARS: Yes, sir; I, I understand. And the reason
10 I'm, I'm making the request under Rule II, I mean, I'm
11 sorry, under Rule III, 2, D, there is --

12 THE COURT: I understand.

13 MR. MEARS: -- a procedure for that. And I understand
14 the Court's reason for not wanting to do that. I just
15 simply wanted to make sure that I had asked for that.

16 THE COURT: I think it would be better that if you do
17 have an objection during the State's argument, let's raise
18 it at that time so that I can address it at the proper time.

19 MR. MEARS: That's fine. I just wanted to make sure I,
20 I had asked because I think it's incumbent upon me to follow
21 the Unified Appeal as best I can. I think also, since the
22 Court had asked, E probably has to be done at this time
23 also.

24 THE COURT: Yes, sir.

25 Mr. Cromartie. Mr. Cromartie, I need to ask you at

1 this time, as I have in the past, whether or not at this
2 time you have any objections to your Defense Counsel?

3 MR. CROMARTIE: No, sir.

4 THE COURT: Either Mr. Mears or Mr. Bryant?

5 MR. CROMARTIE: No, sir.

6 THE COURT: Do you have any objections as to the manner
7 in which they are defending you in this matter?

8 MR. CROMARTIE: No, sir.

9 THE COURT: All right. Thank you, gentlemen.

10 Gentlemen, why don't we take about a five minute break.
11 Is that going to be sufficient?

12 MR. MEARS: Can we have ten?

13 THE COURT: Ten minute recess and then we'll begin with
14 the summations.

15 (Whereupon the Court takes a brief recess, and upon
16 reconvening the following transpired outside the
17 jury's presence)

18 THE COURT: Mr. Hardy, do you need a moment?

19 MR. HARDY: Might as well start, Judge.

20 THE COURT: All right. I believe the State has the
21 opening and concluding.

22 MR. HARDY: Mr. Mitchell will address the jury first,
23 Your Honor, and I'll address them, of course, second.

24 THE COURT: You may bring the jury in.

25 (Whereupon the jury returns to the courtroom,

1 after which the following transpired)

2 THE COURT: Ladies and gentlemen, I believe that we're
3 ready to begin our summations or closing argument. Let me
4 remind you that the summation or closing argument is not
5 evidence in the case and is not to be considered by you as
6 evidence. It's simply the attorneys' opportunity to tell
7 you what they think the evidence has, in fact, proved during
8 the case or has not proved during the case. And it's their
9 opportunity to try to persuade you to decide the case in a
10 particular way.

11 The State has the opening and concluding argument.

12 Mr. Mitchell?

13 MR. MITCHELL: May it please the Court.

14 Good afternoon, ladies and gentlemen. After all the
15 lawyers complete their final summations or closing
16 arguments, which may be, which hopefully will be concluded
17 this afternoon, Judge Horkan will instruct you all in the
18 law that you'll use to apply to the facts of this case as
19 you find them to be. And I want to take just a few minutes
20 and talk with you about some of the principles of law that I
21 expect that Judge Horkan will tell you.

22 Now, instruction in the law will come from the Court
23 and not from me. But I am allowed to talk with you about
24 some of the things that I expect that Judge Horkan will tell
25 you.

1 Now, I'd like to go over the particular charges
2 contained in the bill of indictment that you'll be
3 considering. The first charge in this bill of indictment is
4 the charge of Aggravated Assault against Mr. Dan Wilson on
5 April the 7th, 1997 (1994, sic.). It's alleged in this
6 particular count that the Defendant committed an assault
7 upon Mr. Wilson with the intent to rob. Now, aggravated
8 assault -- an assault is defined as an intent, an intent to
9 commit, an attempt, excuse me, to commit a violent injury on
10 the person of another. An assault, an aggravated assault is
11 either an assault with a deadly weapon or an assault with
12 intent, with intent, in this case, to rob. And so a, an
13 assault being an attempt, it would not be necessary for
14 there to be totally a completed act. In this case there
15 was.

16 The second charge that we're -- that you'll be
17 considering is Possession of a Firearm During the Commission
18 of a Crime. And I think that's fairly self-explanatory.
19 The bill of indictment says, alleges that on April 7th, 1994
20 that the Defendant committed the offense of Possession of a
21 Firearm During the Commission of a Crime, when he had on his
22 person a certain firearm during the commission of a crime,
23 that being aggravated assault, said crime being against the
24 person of another, and that being Dan Wilson, and which
25 crime was a felony. And basically that's self-explanatory.

1 During the commission of a felony a person possesses a
2 firearm during the commission, during the commission of a
3 certain felony. And that'll be the same for count two.

4 For count four which alleges the Possession of a
5 Firearm During the Commission of Aggravated Battery, which
6 I'll discuss with you in a moment.

7 With respect to count six, which alleges the Possession
8 of a Firearm During the Commission of the Crime of Murder
9 against Mr. Richard Slysz on April 10th, 1994, and with
10 respect to count eight which alleges Possession of a Firearm
11 During the Commission of a Crime with respect to the armed
12 robbery of Mr. Richard Slysz on April 10th, 1994.

13 The next charge contained in count three of the bill of
14 indictment is the offense of Aggravated Battery. And this
15 count alleges that on, on or about April the 7th, 1994 that
16 the Defendant caused bodily harm to the person of Dan Wilson
17 by depriving that person, maliciously depriving that person
18 of a member of his body, that being by severing his carotid
19 artery.

20 Basically, what the law says is a person commits the
21 offense of Aggravated Battery when a person, when a person
22 maliciously deprives another person of a member of his body.
23 And that could be anything. It could be your eye's put out,
24 you lose hearing in your ear, you lose your finger. In this
25 case what we're talking about is the carotid artery in Mr.

1 Wilson's neck. And I think that Dr. Hall told you that he
2 had to tie this artery off and that because of this Mr.
3 Wilson is more susceptible to strokes and so forth. So he's
4 been deprived of the use of a part of his body which before
5 he was shot he had. And that's what we're talking about
6 when we talk about the offense of Aggravated Battery,
7 maliciously depriving another person of a member of their
8 body. And, of course, the malice, which I'll talk some more
9 about that in a minute. You walk up to somebody and shoot
10 them, malice.

11 With respect to count five, Murder. Our law says that
12 a person commits the offense of Murder when a person
13 unlawfully and with malice aforethought takes the life of
14 another human being. All right. Malice is defined as the
15 deliberate intention to take the life of another human
16 being. I expect that Judge Horkan will tell you that malice
17 may be, may be either express or implied. I expect that
18 he'll tell you that, I expect that he will tell you that
19 express malice is the deliberate intention to take the life
20 of another which is shown by external circumstances capable
21 of proof. I expect that he'll tell you that malice may be
22 implied where no considerable provocation appears and the
23 killing shows evidence of an abandoned and malignant heart.

24 And I'll give you some examples of some of the things
25 that I'm talking about. Carnell Cooksey told you all that

1 the Defendant had made some statements to the effect of,
2 well, there's just an old man down there at that store.
3 It's a formulation of malice. That's something -- That's
4 external circumstance capable of proof, which you could use
5 to find express malice. I'm thinking about what I'm going
6 to do before I go down and do it. Now, it's a different
7 idea from what's called premeditation. It's a little bit
8 different. Premeditation is, I'm definitely planning to go
9 kill somebody. I think that you do have that, but in this
10 particular cir --

11 MR. MEARS: Your Honor, I'm going to object. Personal
12 opinion evidence is not appropriate. I would object.

13 MR. MITCHELL: I apologize to the Court, Your Honor.

14 THE COURT: Sustained.

15 MR. MITCHELL: With respect to, with respect to implied
16 malice, I expect that Judge Horkan will tell you that malice
17 may be implied where no considerable provocation appears and
18 the circumstances of the killing show an abandoned and
19 malignant heart. And that's the language of, that's the
20 language of our statute.

21 What we're talking about there, is you just walk up to
22 somebody, for no reason, bam, bam. There's no considerable
23 provocation. Evidence of an abandoned and malignant heart.
24 That's an example of what we're talking about there.

25 With respect to count seven of the bill of indictment,

1 Armed Robbery. I expect that His Honor will tell you that a
2 person commits the offense of Armed Robbery when with intent
3 to commit a theft, that means that I'm intending in my mind
4 to go steal something, that you take the property of
5 another, something that doesn't belong to you, from the
6 person or immediate presence of another. Okay. And my
7 immediate presence is, that's not necessarily something,
8 that's something that's right on me. My, my immediate, my
9 immediate presence is, say if a, say if I'm, if I'm standing
10 right here, something -- Det. Spencer over there may be in
11 my immediate presence. From the immediate presence of
12 another by use of an offensive weapon. An offensive weapon
13 is anything capable of inflicting bodily injury or grave
14 serious injury or death. Guns, knives, so forth.

15 So, what we're talking about here is with the intent to
16 commit a theft, I'm going to steal some beer, or, I'm going
17 to try to get some money. There's been some evidence about
18 cash registers being tapped on and so forth. I'm going to
19 steal something, with intent to commit a theft, by use of an
20 offensive weapon I take the property of another from the
21 person or immediate presence of another. And in this
22 particular case I think the evidence would show that Mr.
23 Slysz was in this store, down at the Junior Food Store on
24 Jackson Street. He was behind the counter. He was the
25 person in charge of the store. Individuals -- Beer was

1 removed from there, his immediate presence.

2 I expect that His Honor will tell you that, will charge
3 you with the principle of law called parties to a crime.
4 And what that means is, is any person who aids or abets
5 another or participates in assisting another in the
6 commission of a crime is a party thereto and may be charged
7 with and convicted of the offense the same as, the same as
8 the person that directly, directly committed the offense.

9 I expect that His Honor will tell you that you all are
10 made by law the sole and exclusive judges of the credibility
11 and believability of the witnesses. And it's up to you to
12 decide which witnesses to believe and which witnesses to
13 disbelieve, if there are any that you disbelieve.

14 I expect that Judge Horkan will tell you that all of
15 the witnesses are presumed to honor their oath to tell the
16 truth, but if at some time there is such a conflict in the
17 testimony that you must believe one witness or disbelieve
18 another witness, that you all alone are the sole and
19 exclusive judges of which witnesses to believe and which
20 witnesses not to believe, or which portions of a witness'
21 testimony to believe.

22 I expect that he'll also tell you that where a witness
23 has given statements which are inconsistent with what he
24 testified to, and those statements are introduced into
25 evidence, and we've had that here with respect to the

1 statements of Mr. Young, that those prior inconsistent
2 statements, which are inconsistent with what he testified
3 to, may be considered by you as substantive evidence in the
4 case. In other words, you may consider his prior statements
5 in this case to Det. Weaver and Det. Johnson as substantive
6 evidence in the case. In other words, in other words, you
7 may use that for the, for the substance of what, of what was
8 said. Now, how much of that that you choose to believe or
9 not to believe is solely, I expect Judge Horkan will tell
10 you, is solely an issue for you, the jury, to resolve.

11 I expect that Judge Horkan will tell you that there are
12 two kinds of evidence: direct and circumstantial. Direct
13 evidence is evidence which points directly to a fact in
14 question. In other words, I see it happen. In this case we
15 have both. Direct evidence we have here. Mr. Clark told
16 you all that he was in the store. Mr. Cromartie shot the
17 man. Direct evidence.

18 Circumstantial evidence is the facts and circumstances
19 which point indirectly to a fact at issue. And I'll give
20 you an example of what that is. It's just common sense. In
21 other words, you come out on that rainy morning and you see
22 there's cat paw tracks across the top of your car. You
23 didn't see the cat, but you know the cat with muddy paws
24 walked across the top of your car. That's what we're
25 talking about with circumstantial evidence.

1 Now, another principle of law that I expect that Judge
2 Horkan will charge you with, is that normally the testimony
3 of one witness is sufficient to prove the facts to which
4 that witness testified to. In the case where there are
5 individuals who are co-defendants or accomplices there must
6 be, there must be some corroboration of that person's
7 testimony. And that corroboration may be slight. And
8 whether or not there's been sufficient corroboration is an
9 issue for you, the jury, to decide. In other words, in this
10 case, slight corroboration is all that's required. Mr.
11 Clark told you what happened. You've got the fingerprint
12 outside the store. You've got that shoeprint. You've got
13 the testimony of Mr. Cooksey. You've got the testimony of,
14 statements of Mr. Young. You've got the testimony of Mr.
15 Lucas. All of that evidence together is corroboration.

16 Another principle of law that I expect that His Honor
17 will instruct you with is reasonable doubt. And I expect
18 that Mr. Mears will talk, talk with you about reasonable
19 doubt to some great degree. I expect that he will, that
20 Judge Horkan will tell you that the State has the burden of
21 proving every essential element of the offenses charged,
22 which I've just briefly glossed over with you, beyond a
23 reasonable doubt. I expect that Judge Horkan will tell you
24 that a reasonable doubt is not a vague, far flung,
25 arbitrary, or capricious doubt. I think that he'll tell you

1 that it's the doubt of a reasonable, fair-minded juror
2 diligently seeking the truth.

3 And, as I say, I expect when Mr. Mears comes up here in
4 a minute that he will talk with you at some length about the
5 concept of reasonable doubt. And before I sit down I'd like
6 just to briefly touch on that with you. I submit to you
7 that a reasonable doubt is just what it says. It's a doubt
8 that's reasonable. The State's not required to prove the
9 guilt of the accused beyond all doubt or to a mathematical
10 certainty. Moral and reasonable certainty is all that we
11 can expect in a legal investigation. And I expect that
12 probably when they talk about the term, reasonable doubt,
13 when Mr. Mears comes up here in a minute, he's an excellent
14 attorney, I expect that he'll emphasize that word, beyond a
15 reasonable doubt, as if the State had to go beyond the
16 horizon and to the ends of the earth to prove the Defendant
17 guilty. I'd submit to you that that term, beyond, is really
18 a little bit misleading, because what we're talking about
19 here is, all the State really has to prove is that there is
20 not a reasonable doubt in the case. Reasonable doubt is not
21 a mere possible doubt, because everything which relates to
22 human affairs and depends upon moral evidence is open to
23 some possible or imaginary doubt. And that's not what we're
24 talking about. What is a reasonable doubt? It's a sound,
25 sensible, logical doubt based on evidence.

1 We would submit to you that based on the evidence
2 that's been presented in this case, there's no reasonable
3 doubt of the guilt of this Defendant. Now, I'm going to sit
4 down here and Mr. Mears will have the opportunity to address
5 you. After Mr. Mears addresses you, Mr. Hardy will have the
6 opportunity to come before you and talk with you about the
7 specific facts of this specific case, which I've only, which
8 I've only glossed over and superficially alluded to. And I
9 expect that after Mr. Hardy had his opportunity to come back
10 and talk with you, that you'll be satisfied that there is no
11 doubt, reasonable or otherwise, as to the guilt of this
12 Defendant.

13 THE COURT: Mr. Mears?

14 MR. MEARS: Good afternoon, ladies and gentlemen. This
15 is one of the scariest moments of any attorney's life, is
16 standing before the jurors at the conclusion of a trial, a
17 trial in which that attorney's charged, that attorney's
18 client, that attorney's reason for being here is being
19 submitted to the jury as a human being. I introduced Ray
20 Jefferson Cromartie to each one of you at the beginning of
21 jury selection. I want to do it again as we finish.

22 Ray, stand up (Mr. Cromartie complies). Ray Jefferson
23 Cromartie.

24 Thank you, Ray (Mr. Cromartie sits down).

25 And I don't want us to forget the other people that

1 have caused us to be here, have reason. Mr. Richard Slysz,
2 the gentleman who was killed at the Junior Food Store. Mr.
3 Dan Wilson, the gentleman who suffered a gunshot wound in
4 his face at the Madison Street Deli. You have to consider
5 those individuals as well as Ray Jefferson Cromartie.

6 Another thing that scares attorneys at this point is
7 that perhaps the attorney has done something to make the
8 jurors mad, some phrase, keeping the courtroom too cold or
9 too hot. You don't know. You're just terrified that you've
10 done something that will make the jurors decide the case on
11 something other than what they heard from the witness stand.
12 If that has happened, hold it against the attorney, not
13 against Ray Jefferson Cromartie.

14 The role of a criminal trial in our society is one of
15 the most sacred roles in this system that we have. You as
16 twelve strangers to Ray Jefferson Cromartie and twelve
17 strangers to Richard Slysz and Dan Wilson are going to write
18 chapters in the books of their lives. Whatever you do here
19 today or tomorrow will be a chapter in the lives of those
20 three human beings. One way or the other, good, bad,
21 whatever. The enormity that our society has put on your
22 shoulders surpasses any fear that I have.

23 As I argue the case to you, please understand my job is
24 not to convince you one way or the other of one fact or
25 another. My job is to make sure that the evidence is

1 presented. Mr. Bryant's job likewise, make sure the
2 evidence is presented fairly within the rules of evidence.
3 Make sure that we do our job on behalf of Ray Jefferson
4 Cromartie. I'm not up here to convince you one way or the
5 other. I don't have that ability. The evidence must
6 convince you. We live in a day when television and movies
7 just have blown courtroom proceedings out of proportion.
8 Every juror sometimes, I'm afraid, thinks that defense
9 attorneys and prosecutors are supposed to argue to you
10 according to some script that's been written and rewritten
11 and rewritten by screen writers so that we come in here and
12 just wow you right into one decision or another. It doesn't
13 work that way.

14 What I am going to do, just like Mr. Mitchell and Mr.
15 Hardy will do, Mr. Mitchell has done and what Mr. Hardy will
16 do, is to try to focus your attention on those portions of
17 the evidence that we feel should be considered by you in
18 making your decision as to whether or not Ray Jefferson
19 Cromartie is guilty beyond a reasonable doubt of the offense
20 of Aggravated Assault and Aggravated Battery on Mr. Dan
21 Wilson, Possession of a Firearm During the Commission of
22 those two felonies, whether he's guilty beyond a reasonable
23 doubt of the offense of Murder of Mr. Richard Slys, whether
24 or not he's guilty beyond a reasonable doubt of the Armed
25 Robbery and Possession of a Firearm During the Commission of

1 the Crimes at the Junior Food Store.

2 Mr. Mitchell, I'm afraid, gives me too much credit with
3 regard to arguing reasonable doubt. I'm not going to spend
4 a great deal of time talking to you about reasonable doubt.
5 You'll be charged as to what reasonable doubt is by the
6 Judge. But I would suggest to you that reasonable doubt is
7 the doubt that you individually have about the elements of
8 this case. It's doubt for which you, as individual jurors,
9 can assign to each individual item of evidence that was not
10 proven to you beyond a reason, a reason which you
11 individually, not collectively, subscribe to the value of
12 each item of evidence, including the testimony. That's all
13 it is. There's nothing magical to it. You are not asked to
14 leave your common sense outside the courtroom. No one has
15 asked you to do that. What you're asked to do is to keep an
16 open mind and not automatically assume that Ray Jefferson
17 Cromartie is guilty of anything until the State has proven
18 to you as an individual each and every element of each and
19 every offense beyond a doubt, a doubt which has reason which
20 you subscribe to it. If you are left unsettled or troubled
21 by a piece or a bit of evidence or testimony, that's
22 reasonable doubt. If you feel that the evidence or the
23 testimony on any particular issue leaves you unsettled, if
24 you're saying to yourself when you go back in the jury room,
25 if you say, I'm not sure that that happened that way, that's

1 reasonable doubt. And if you are unsettled and if you're
2 not sure, that will be your decision. It will also be a
3 part of the chapter you're going to write in Ray Cromartie's
4 life.

5 Now, I would like to go over some of the evidence with
6 you. Please understand that when I am talking about the
7 evidence and pointing out certain things that have occurred
8 here in the courtroom, I am not attempting to supplant your
9 memory of what took place. Some of you have been very
10 diligent. Most of you, I think, have been very diligent in
11 taking notes. And I believe Judge Horkan has told you and
12 will tell you that you're entitled to use those notes to
13 refresh your own memory, but you're not to use other
14 people's notes in place of what your memory is, because, you
15 see, even though you are twelve, you will be twelve people
16 making this decision, you are each individually charged with
17 a responsibility.

18 Now, let me talk about the classificationS of witnesses
19 we had. We had police witnesses. You heard those police
20 witnesses. And let me suggest to you that every police
21 officer who testified, including the crime scene
22 technicians, the officers from Patrolman Allen on to Mr.
23 Collins with the G. B. I. were doing their jobs the best
24 they could under the circumstances, but they were limited in
25 what they could do because they were not at the scenes of

1 either one of those crimes when they occurred. So what they
2 were dealing with were bits and pieces of evidence that was
3 either collected or pointed out to them or that they
4 developed. You have to keep that in mind.

5 Just because a police officer comes in and testifies as
6 to a particular fact, you don't have to believe them. You
7 don't have to disbelieve them. They're like any other
8 witness. What I would suggest that you might want to do is
9 to listen to, in your mind, their testimony as it relates to
10 the testimony of those witnesses who claim to have been
11 present or to have been associated with the particular
12 incidents about which they were testifying.

13 Now, how do you do that? How do you take the testimony
14 from one witness to the other witness and apply it? One way
15 is that you take the law that Judge Horkan will give you.
16 You see, this case is like a puzzle to a certain extent.
17 The prosecutor starts out, hopefully, with pieces of the
18 puzzle. They bring them into court through the individual
19 witnesses and they present them. And they put the pieces
20 out here. They don't have to put the puzzle together unless
21 they want you to believe the whole picture. The individual
22 pieces of the puzzle, and if there's a piece missing, then
23 that gives you an incomplete picture of what happened. Some
24 of the pieces are false pieces. Some of the pieces were
25 brought in here by people who lied to you. They had lied to

1 Judge Horkan before they came into this courtroom. They
2 lied to the police officers before they were ever charged.
3 They lied after they were charged. And I would submit to
4 you, ladies and gentlemen, they, some of those individuals
5 lied to you here in this courtroom. That's for you to
6 determine. But I would suggest to you that the evidence is
7 very clear based upon their inconsistent statements, the
8 evasive statements that they made, and the disproved
9 statements that they made, that they lied to you.

10 You'll be charged that if you find that a witness'
11 credibility has been impeached by either making a prior
12 inconsistent statement or by lying to you in some form, you
13 can, if you choose, disregard everything that particular
14 witness said. That's up to you. That's part of putting
15 together the pieces of the puzzle that have to be put, put
16 before you in order to create a picture.

17 What is the picture supposed to be? It's supposed to be
18 the truth. That's what verdict means. You're going to go
19 back and be asked to render a verdict. Verdict, I was told
20 one time, is simply part of a Latin phrase meaning vitae
21 dicta (ph.), the truth, to speak the truth. And I would
22 suggest to you, ladies and gentlemen, that some people that
23 came before you in this courtroom did not speak the truth.

24 Now, should you on that basis alone find Ray Jefferson
25 Cromartie not guilty of the offense? Yes. Because the

1 people that lied to you were the only people that claimed to
2 have any knowledge of what happened at the Junior Food
3 Store.

4 Now, the Madison Street Deli. I know it's late in the
5 afternoon and I'm going to try to be quicker with this than
6 I was with Mr. Collins because I know I lost a lot of you by
7 going through Mr. Collins point by point, and I apologize
8 for that. It was just something that came over me, I felt I
9 had to do. And I'll try not to do that here this afternoon
10 with you. But it's important. This young man is on trial
11 for the crime of Murder.

12 Now, let's look at Madison Street Deli. First of all,
13 the Madison Street Deli, the assault on Mr. Wilson, is not
14 related to the Junior Food Store, according to the State's
15 own evidence, except by this little pistol that they, that
16 was used, this instrumentality here. The thing connecting
17 the Madison Street Deli and the Junior Food Store was this
18 pistol.

19 Now, the State would have you believe that the pistol,
20 and I, I'm not really asking you to dispute the ballistic
21 tests in this case. You notice, I didn't ask Mr. Howard any
22 questions about his ballistic comparisons. I tried not to
23 ask questions about things that we weren't disputing. This
24 pistol was in the possession of Gary Young on April the 6th,
25 1994. I submit from the evidence you can find that this

1 pistol was in the possession of Gary Young on April the 7th
2 of 1994. I would submit to you that Gary Young was in that
3 store. I would submit to you that Gary Young had been in
4 that store. I would submit to you that this was his pistol.
5 What other evidence do you have that Ray Cromartie was ever
6 in the Madison Street Deli on April the 7th of 1994? Stop
7 and think about it. Stop and think about what other
8 evidence did you have, what evidence at all did you have
9 that he was in that store other than the he shay, he say,
10 she say testimony of some people that came in here and lied
11 to you? Now, a lot of people may cringe when lawyers, and
12 we're supposed to be real polite when we use the word "Lie".
13 And people sort of say, "Well, he shouldn't be saying that.
14 He could just say untruth. Just say they're mistaken."
15 Ladies and gentlemen, there's no other way to cut it. Those
16 people lied to you about what they had heard at the Madison
17 Street Deli.

18 This green coat that you heard here, that you had here,
19 and the black stocking cap. Nothing to connect Ray
20 Cromartie to that hat and that green coat except the
21 testimony of Gary Young. They sent it off to the F. B. I.
22 lab. You heard that. And they didn't check it for hairs.
23 They didn't check it for fiber. They didn't do anything
24 with it. It came back. Did you hear any testimony at all
25 about that coat, that hat belonging to Ray Cromartie or

1 being on Ray Cromartie on April the 7th? Who told you it
2 did? Gary Young.

3 Gary Young's gun, Gary Young's coat, Gary Young's hat,
4 ladies and gentlemen. Now, I probably spent too much time
5 with Mr. Young asking him about his do-rag and some of my
6 associates laughed at me about using the term do-rag or
7 bandanna.

8 There's more to going on, going on with the Madison
9 Street Deli than a purported robbery. Mr. Young is staying
10 at the Cherokee Apartments. Madison Street Deli is over by
11 the west side. Ladies and gentlemen of the jury, I would
12 submit to you that the only evidence you have before you at
13 all that has any credibility at all is the physical items,
14 because the gun belonged to Gary Young. Everybody, even his
15 friends, said it was his gun. Remember? Did you see that
16 gun in his hand on Wednesday, Tuesday, Thursday, Friday?
17 Yes. Yes. Yes. Yes. Yes.

18 Ladies and gentlemen, what other evidence was there
19 given to you that Ray Cromartie committed the offense of the
20 Aggravated Battery, Aggravated Assault on Mr. Dan Wilson?
21 You see, what has happened here is just that, oh, we've got
22 this evidence about the Junior Food Store and I want to talk
23 to you about that. They said, well, we've got this evidence
24 about the Junior Food Store; oh, and we've got this other
25 robbery over here at the Madison Street Deli and we'd better

1 get rid of them at the same time because the same person
2 must have done them both. Well, Junior Food Store, the
3 State's case said it was, it was three people driving a car
4 over to W. Jackson Street, two of them going in, one
5 shooting Mr. Slys, the other stealing some beer and running
6 out. The Madison Street Deli, supposedly, according to the
7 State's version, one lone person comes in real quickly,
8 shots Mr. Wilson, plays with the cash register for a second
9 and runs back out.

10 Ask yourself the question, why didn't the State play
11 the rest of the tape for you? Why didn't they show you who
12 had been in and out of that store before that gunman came in
13 there? You didn't see the rest of that tape. Well, let me
14 ask you this. If the State's version about Junior Food was
15 even anywhere near close, why did Ray Cromartie walk all the
16 way from Cherokee Apartments all the way over to Madison
17 Street and then walk all the way back over there on the 7th?
18 That's, that's their story. That's Gary Young's story. And
19 then turn around and get Thad to drive them down to W.
20 Jackson Street, just a few blocks south of where Mr. Clark
21 lived.

22 You see, ladies and gentlemen, the Madison Street Deli
23 and all of the horror that Mr. Dan Wilson had to suffer, and
24 probably still suffers, is not the result of anything that
25 Mr. Cromartie did on April the 7th.

1 Mr. Hutchinson told you that they came in and they took
2 seven or eight latent prints and then threw them away that
3 night. Now, you've got to consider -- I'm not saying Mr.
4 Hutchinson purposely threw those away. Please don't
5 misunderstand that. But why would they throw away prints
6 without asking somebody to check them out? Why not get some
7 help? We, we'll never know. We'll never know whose prints
8 might have been on that cash register.

9 Now, you heard Mr. Hutchinson say in nineteen years
10 he's never made a mistake. Nineteen years of countless
11 hours of testing and coming into court and testifying, never
12 made a mistake. I've been trying cases for twenty years and
13 I've made a lot of mistakes. I don't know there's a human
14 being alive that doesn't make mistakes at times. What
15 happened to those prints? Whose prints were they? Why
16 didn't you see the rest of the videotape?

17 I'll tell you this, ladies and gentlemen, the evidence
18 that was presented to you is not credible as it relates to
19 the accusations against Ray Cromartie and the Madison Street
20 Deli. It's just not credible. If you convict Ray Cromartie
21 of the offense of aggravated assault and aggravated battery
22 and possession of a firearm during the commission of those
23 two offenses, you will do it on the testimony of Gary Young.
24 And God help us if we put young men in prison on that kind
25 of evidence.

1 Let's talk about the Junior Food Store, April the 10th.
2 Now, Corey Clark and Thaddeus Lucas cut deals. People do it
3 all the time. There's an old adage among criminal defense
4 lawyers that's kind of crass, I guess, but it says, the
5 first to squeal gets the deal. That's, that's what people
6 say. Whoever gets to the prosecutor first with the best
7 story gets the deal. In this case, Gary Young got the best
8 deal of all. Gary Young had originally been charged with
9 the Madison Street Deli. He was originally charged in, I
10 can't even say the word, because it was so -- they, they
11 charged him. So, you see, if they use the story of Corey
12 Clark and Thaddeus Lucas against Mr. Cromartie, then they
13 couldn't prosecute Gary Young for the Madison Street Deli.
14 You see the dilemma they found themselves in. Because Gary
15 Young said, "No; I didn't do that". That's my gun but I
16 didn't do it. I've been over there. I've been wearing my
17 gang rags but I haven't been over there". You see, they
18 couldn't pursue the case logically against Mr. Young and
19 pursue the case at the Junior Foods, even though it was his
20 gun. He got the best deal of all. He didn't get charged
21 with murder at Junior Food and he had his case dismissed.
22 You'll see the documents out with you. Not just not
23 prosecuted, but dismissed. Gary Young is walking the
24 streets of Thomas County and Thomasville, Georgia and it
25 was his gun in both robberies.

1 Just as an aside, not that it's really that important,
2 but they didn't even try to find out who that belonged to,
3 ladies and gentlemen. Had the dog Pete that says he can
4 pick up scents up to seventy hours later. They never once
5 tried to track that scent from that particular sweatshirt.
6 Now, ladies and gentlemen, I would submit to you that
7 sweatshirts, I don't know, but I'm assuming, that sweatshirts
8 -- set -- sweatshirts give off a better tracking scent than
9 shoes on a concrete floor in a convenience store.

10 You see, the reason they didn't pursue it is because it
11 didn't fit what they had already made up their mind by April
12 the 13th the story had to be, because the first to squeal
13 got the deal. Carnell Cooksey overheard -- Ladies and
14 gentlemen, Carnell Cooksey never heard anything from Ray
15 Jefferson Cromartie. Carnell Cooksey heard the talk out at
16 Cherokee Plaza. That's what I would suggest that you
17 consider. Carnell Cooksey got arrested. First one in
18 there, said, I can tell you something, where that gun is.
19 And they went and found the gun right where Carnell Cooksey
20 said that Gary Young had thrown in. The first to squeal got
21 the deal.

22 Corey Clark and Thaddeus Lucas and Gary Young were
23 friends. They were very thick. They were very tight. Jeff
24 Cromartie came down here from Pittsburgh. Some people say
25 Philadelphia, Pittsburgh. His family lived out near Boston.

1 He had lived here as a young person. His grandmother lives
2 down near Beachton. He was spending some time with Mr. Joe
3 Lundy, who was sort of his, his pretend father, someone who
4 had given him love and care as he was growing up for periods
5 of time. He was an outsider at Cherokee Plaza. You heard
6 Lisa Young testify that he didn't do a whole lot over there,
7 stayed on the phone. He was homesick for his girlfriend in
8 Pittsburgh.

9 Judge Horkan will charge you in so many -- he will
10 charge you to the extent that you can't convict Ray
11 Cromartie for hanging out with the wrong people. You can't
12 convict Ray Cromartie for his being present around other
13 people. Ray Cromartie, ladies and gentlemen, got smack dab
14 in the middle of something that he didn't know he was
15 getting in the middle of. Because on April the 12th, now
16 I'm skipping around a little bit, but I hopefully will tie
17 it all together for you. On April the 12th there was a
18 shooting at the Cherokee Plaza Apartments. You recall that
19 some guys from West Side came over looking for somebody.
20 The only person we have evidence that they shot at was Gary
21 Young. Ask yourself, why would some young men from West
22 Side come looking for Gary Young at Cherokee Apartments,
23 looking for him to the extent that he -- that they would
24 fire at him through the apartment window, his girlfriend?
25 What did Gary Young do? He took this gun, it was in his

1 possession, went out there and tried to kill them. That was
2 his testimony. In his statement to the police, he said,
3 "Oh, I fired it in the air". Then in here he told you he
4 tried to kill them. Then he tried to get somebody to hold
5 the gun for him. You remember, I asked one of the police
6 officers, why would anyone not want to be arrested with a
7 pistol on him. Two reasons. One, it's a hot gun where the
8 gun's been involved in a crime. And that's exactly what
9 happened.

10 Gary Young knew on, on April the 12th that he had to
11 get rid of that gun. Stop and think about it. If he had
12 been attacked, why would he throw the gun away? If the gun
13 wasn't hot and he was being attacked by some people, why
14 didn't he throw the gun away? I'll tell you why. Because
15 on April the 12th Gary Young knew how that gun had been used
16 twice. He knew he had to get rid of the gun or he'd be
17 smack dab in the middle of the Madison Street Deli assault
18 on Dan Wilson and smack dab in the middle of the charges of
19 murder involving Mr. Slys.

20 Gary Young is in the middle of this pot of mess we've
21 got here. How he dealt with this situation on April the
22 12th out at the Cherokee Apartments should give you some
23 concern about the evidence that the State presented to you.
24 Are you going to believe Gary Young? Are you going to
25 believe him when it was his gun, him shooting, him trying to

1 kill someone?

2 During the jury selection I think everybody on this
3 panel was asked by Mr. Hardy, do you believe what you read
4 in the Thomasville Times newspaper. And I'm not from around
5 here. And I was rather surprised by all the responses. And
6 I found, subsequently found out that a lot of people don't
7 believe what they read in the newspaper. If you don't
8 believe what you read in the newspaper, are you going to
9 believe what Gary Young said? A newspaper that doesn't have
10 any interest, supposedly, to go do it one way or the other.
11 And you're going to believe what Gary Young says when it
12 involves convicting a, the young man of murder?

13 Well, Carnell Cooksey started the process of telling,
14 the story got started, and I want ya'll to just think about
15 it when you go back and start deliberating, how consistent
16 that story was. I guess you could say, well, it happened
17 exactly that way, A, B, C, D, right down the line. Ladies
18 and gentlemen, the story was told and told and rehearsed and
19 rehearsed to get it right.

20 Now, I know that is going to be difficult for some of
21 you to understand or even believe, because you're going to
22 say to yourself, well, Mr. Mears, Ray Cromartie is on trial.
23 He must have done something wrong. He did. He hung out
24 with Gary Young. He was staying in the Cherokee Apartments.
25 He was quiet. He wouldn't date the girls that Lisa Young

1 was fixing him up with. He was on the phone all the time.

2 Ray Cromartie's involvement in the Junior Food Store is
3 something that you're going to have to wrestle with,
4 starting with Gary Young's story, because, ladies and
5 gentlemen, that's the story that started the stories that
6 you heard from Corey Clark and Thaddeus Lucas. And whatever
7 involvement Ray Cromartie might have had in that particular
8 incident, if any at all, is something you're going to have
9 to decide. You're going to have to decide it based upon the
10 evidence that was presented, not what you supposed, not what
11 you think, not what you may believe.

12 But let me suggest to you what happened in the Junior
13 Foods Store, inside that store that night. And I suggest
14 that you can listen, think about the physical evidence and
15 think back to some very critical testimony, because, you
16 see, as good as their story was, as well rehearsed as those
17 young men got the story, they slipped up and made a bad, bad
18 mistake in their story because they didn't know how it was
19 going to look when they started telling that story because
20 they didn't know what the evidence technicians were going to
21 find or had already found and what the photographs were
22 going to show.

23 You see, first of all, Gary Young, Corey Clark,
24 Thaddeus Lucas and perhaps Carnell Cooksey, if he actually
25 heard anything, they didn't know what the initial witnesses'

1 statements were about the people who came out of the Junior
2 Food around 3:00 to 4:00 o'clock that morning on April the
3 10th. They didn't know that the witnesses would testify
4 that the first person running out of the store had on a cap,
5 had on a light colored shirt, and dark blue pants. Do you
6 recall Thaddeus Lucas' testimony about what he was wearing
7 that night when he said he was out there on W. Jackson
8 Street? If I recall correctly, Thaddeus Lucas said he was
9 wearing his Domino's Pizza cap, bright blue I believe he
10 said, or some type of blue, and his dark blue shorts. You
11 see, whatever Mr. Seitz and Bruce Taylor and Mr. Walsh saw,
12 the testimony that was given to Off. Allen fifteen minutes
13 after they saw it, not after they thought about it, not
14 after they discussed it, not after it'd been in the paper,
15 not after all of that. When they first heard the police
16 come up and they first told the story, they said the person
17 coming out of there had a ball cap, light shirt, dark
18 shorts, and they said they were running. Now, I know
19 there's some other testimony about whether they walked,
20 stopped. They said they were running, running with two
21 twelve packs of beer under, or two twelve, twelve ounce
22 cartons of beer under their arm. You see, when they started
23 telling their stories, they didn't know that somebody had
24 seen them there, running out of the store. They didn't know
25 that.

1 Also, when Corey Clark, after he finally got it right,
2 and he lied to Judge Horkan during his sentencing hearing
3 about whether he'd ever gone behind the counter or not, I
4 questioned him, had him read his transcript, you'll remember
5 that. Even Corey Clark never put in his story Ray Cromartie
6 behind that counter. Even Corey Clark's story told and
7 retold, even the he say-she say story that was going around
8 in the Cherokee Apartments never put Ray Cromartie behind
9 that counter.

10 This gun was fired, according to the estimates of the
11 State's witnesses, six inches from the left temple of Mr.
12 Slysz. You have the photograph. I'm not going to wave the
13 photographs around. I'm not going to do that. You'll see
14 those. You'll have them out there with you. Mr. Slysz was
15 seated at a small bar type of chair doing his paperwork. In
16 fact, he was tallying up perhaps the night's receipts. And
17 Corey Clark said that, according to his version, that Ray
18 came in and went down the candy aisle, right here
19 (indicating). And that he proceeded on to the beer coolers
20 over here. It appears from the photographs and from the
21 testimony that I asked the witnesses whether or not he, Mr.
22 Slysz was sitting in the chair and he said he thought he
23 was.

24 Now, ladies and gentlemen, stop and think for a moment.
25 Stop and think about Corey Clark's version of what happened.

1 The person who went down this aisle, came back up. You
2 remember I asked, is this an open space here? Yes; it's an
3 open space. Is this unobstructed? Yes; it's unobstructed.
4 The person walks up over this counter and fires directly
5 into the face of Mr. Slyszy. Is Mr. Slyszy still going to
6 have the pencil in his hand and not even know what hit him?
7 No, ladies and gentlemen. The person that shot Mr. Slyszy
8 went through the store, instead of going down the beer
9 aisle, he turned and walked back around the aisle, directly
10 there, shot Mr. Slyszy right there, excuse me, in his left
11 temple just like that, sitting here like that. Mr. Slyszy is
12 falling out of the chair and the second shot hits him right
13 there and he falls in the position you see him in. Why do
14 we know that? The casings. The casings of the shells that
15 sent projectiles into the head of Mr. Slyszy. They're not
16 over here. They're not over there. They're right here.

17 Look at your notes when you get back and start
18 deliberating. Think back to what Dr. Howard said about the
19 ejector pattern of this gun. Ejection pattern of this gun
20 and the casing that come out. Remember what he said? They
21 go up and out, up and out, like this. Where was he standing
22 to shoot Mr. Slyszy? Both of those shell casings were over
23 in this corner.

24 I'm sure the State will ask you to consider other
25 alternatives, and you should. You should consider all of

1 the evidence in this case, but you don't leave common sense
2 behind that door when you come in here, and you're not asked
3 to leave common sense in here when you go behind that door
4 to do your deliberations. You take the evidence, you apply
5 the law, you apply logic to it. That's the beauty of the
6 jury system.

7 Ladies and gentlemen, you look at the photographs.
8 Some of them are rather gruesome. They show Mr. Slys on
9 the, on the floor with a lot of blood around him. Ladies
10 and gentlemen, logically, logically, Corey's Clark's story
11 doesn't add up to the facts. Another thing, Corey Clark
12 says that Ray shot Mr. Slys when he was standing at the
13 cash register reaching over this way and then he yells for
14 him to come up from where he said he was on the floor back
15 here by the beer cooler, come up here and get the cash, get
16 the money. I -- That just doesn't calculate. Why would he
17 ask Corey to come up if Corey never knew they were going
18 there to get money, if Corey's only thought, well, I'm just
19 going there to pick up some beer. If Corey was only there
20 to get beer, why would he go running to the front of the
21 store, as he said, follow the directions of Ray Cromartie,
22 try to open the cash register from back around here? For
23 one reason, Corey's story doesn't pan out and he forgot this
24 part of it. He was already behind the counter. He was
25 already behind the counter. He was already back there to

1 get into the money.

2 Ladies and gentlemen, when they made up their story,
3 they didn't know what the physical evidence was going to
4 show. That's why the stories they told, when you look at
5 them, don't hold water with regard to how Mr. Slyszy was
6 shot.

7 I'm sure Mr. Hardy will ask you to examine other
8 possibilities. He's going to ask you to believe Corey
9 Clark. He's going to ask you to believe Gary Young. He's
10 going to ask you to believe Thaddeus Lucas. I'm going to
11 ask you to believe what the evidence shows, not what the
12 lies from the witness stand wanted you to believe. You see,
13 once the story was told, once it was put into place, once
14 the deals were cut, they had to stick with them, even when
15 they became inconsistent with each other. Corey Clark had a
16 deal to get out of prison in the year 2009, if not sooner.
17 They didn't even try him for armed robbery. They didn't try
18 him for aggravated assault. They tried him, or let him
19 plead guilty to the offense of robbery. They want you to
20 sentence, they want you to convict Ray Cromartie for the
21 offense of murder based upon a story that was a result of
22 that kind of deal. Thaddeus Lucas -- You'll have all of
23 these documents out with you, and I, I urge you to look at
24 them as part of your evaluation of the evidence in this
25 case. You'll see Thaddeus Lucas got, got a deal. You'll

1 also see that while Thaddeus Lucas was out on bond as part
2 of his deal, he beat up his other girlfriend and put her eye
3 out, aggravated battery, and broke her orbital, knocked it
4 out. Aggravated battery, as you will hear the charge
5 involving Mr. Dan Wilson, means depriving someone of a
6 member of their body. You'll read it in the indictment
7 that's out with the evidence. Broke her jaw, broke her
8 orbital, this bone in here. A person that can do that to a
9 defenseless woman can lie to you if it protects them. A
10 person that can do that to any other human being is not
11 going to be afraid to cut a deal with somebody that they
12 hardly know in prison if it protects them.

13 You see, I asked each one of those individuals, you
14 were protecting yourself; weren't you? And they did. Gary
15 Young made out like a champ. He's walking the street. It
16 was his gun. He was the one that shot Mr. Wilson at the
17 Madison Street Deli, ladies and gentlemen. He's walking the
18 streets of Thomasville, Georgia as I'm talking to you right
19 now.

20 Corey Clark and Thaddeus Lucas are in prison. They'll
21 get out. They got a great deal. They don't even have an
22 armed robbery conviction on their record. Just plain simple
23 robbery. They got a great deal. And they did it because
24 they agreed, they agreed to let Ray Cromartie come to trial
25 than them. They agreed it was better for them for Ray

1 Cromartie to take the fall.

2 Now, I know you're asking yourself, wait a minute, Mr.
3 Mears, didn't I hear something about a footprint out by the
4 Junior Food Store? Wait a minute, Mr. Mears, didn't I hear
5 something about a fingerprint? Ladies and gentlemen, the
6 footprint -- First of all, you've got to decide whether it
7 was his shoe or not. Based upon that print, boy, it sure
8 seems like it. Dr. Howard is a very fine man. He brought
9 in this herringbone pattern shoeprint. Sure looks like it
10 fits Ray's shoes. He couldn't say that. He said it was
11 similar. Stop and ask yourself the question, if Ray were
12 wearing those shoes that night, if, if Ray was wearing the
13 shoes that morning, excuse me, why didn't that print -- why
14 weren't the prints that were taken, why weren't they running
15 away from that store? That's what the witnesses said, the
16 person coming out of the store carrying the beer was doing,
17 was running. It certainly wasn't a running print. You look
18 at the photographs and apply some common sense. As Dr., as
19 Dr. Howard said, we use scientific methods. Look at it.
20 That was a scientific method he used. Look at it. That, is
21 that tennis shoe running through that sand that night? You
22 might decide that that is Ray Cromartie's shoe. It was as
23 far as beyond that door to that chair from where the beer
24 cartons were. Is that enough evidence, even if you decide
25 it's similar to his shoe, and that's all you can decide,

1 that's all that the expert said it was, are you going to
2 find him guilty of murder based upon that, because there's
3 nothing in the store, nothing in the store to connect him to
4 this crime except Corey Clark.

5 But, you're saying, wait a minute, Mr. Mears, what
6 about the fingerprint taken by Mr. Hutchinson? You've seen
7 the swirls and I'm sure you'll take them back out and look
8 at them and see it again. Quite frankly, ladies and
9 gentlemen, I don't know whether that's his print or not. I
10 don't know. Mr. Hutchinson said he had never made a mistake
11 in nineteen years of testifying. And he had not made a
12 mistake this time. I can look at these prints, and I have
13 till I've almost gone blind, and, you see, this is the known
14 print. This is the one where you start from. You see,
15 fingerprint identification is good in a lot of cases if you
16 keep the prints and don't throw them away. Fingerprint
17 identification is good if you use the right chemicals. But
18 this is the known print. This is the one that was on the
19 beer carton. And what, what the fingerprint examiner does
20 is that they look at this with a magnifying glass and they
21 look at this one with a magnifying glass and they try to
22 find the number of ridges that corresponds. Okay, there's a
23 ridge here, and there's a ridge there. That's one point.
24 And they go down -- And Mr. Hutchinson said he found ten
25 ridges. He didn't find any islands. He didn't find any

1 bifurcated lines or he didn't find any trifurcated lines.
2 You heard him make the explanation. He only found ridges.

3 I would submit to you, ladies and gentlemen, that's all
4 he found. You have to take his testimony at the Junior Food
5 Store as a professional in light of his conduct at the
6 Madison Street Deli. You can consider that in determining
7 whether or not that is a sufficient identification for you
8 to find a young man guilty of murder.

9 Now, I can argue to you, well, we don't know when that
10 print was put on there. That's something, I mean, that's --
11 you can decide that. That might be a stretch for you. What
12 I'm suggesting to you, ladies and gentlemen, that after
13 nineteen years of not having made a mistake, are you willing
14 to convict someone of murder? There were twelve other
15 prints in that store. According to the State's own
16 witnesses, Mr. Corey Clark, he touched the cash register.
17 They had his prints. And he couldn't match up the prints on
18 someone who had tried to get into the cash register. If you
19 haven't made a mistake in nineteen years, and you've got
20 someone telling you, I touched this cash register, I tried
21 to get money out of this cash register, and you can't find
22 their prints on it? You can't identify their prints on it?
23 Come on, what's going on here? I tell you what's going on
24 here. It's the same reason Ray Cromartie's shoes were sent
25 to the crime lab for identification two years before anyone

1 else's shoes were ever sent up there. I think it's the old
2 ones. These didn't even come close to matching it.

3 Ladies and gentlemen, every document you're going to
4 see from April the 13th on has got Ray Cromartie's name on
5 it. He was accused, singled out, picked out, he was the
6 person, according to the police, from day one, April the
7 13th. Why? Because Gary Young said so. He was the person
8 from day one. Why? Corey Clark said so. Thaddeus Lucas
9 said so. He may be his friend. I don't know. But after
10 nineteen years of not making a mistake, are you willing to
11 risk that young man's life on that kind of infallibility?

12 You know, they give us pencils to write with, and I
13 borrowed this one. It's got an eraser on it. You know why
14 we have erasers on pencils? Because some of us make
15 mistakes sometimes. You very rarely see a pencil without an
16 eraser on it these days. Why? Because people make
17 mistakes. If you make a mistake with this pencil, you write
18 something out and you miscalculate, if I figure my income
19 tax wrong, I can get it straightened out, can erase it and
20 start it over again. That's what erasers are for, ladies
21 and gentlemen. You make a mistake, you don't have an eraser
22 on that verdict form. You make a mistake, that young man
23 right there is going to be found guilty of murder, the most
24 heinous offense we have in our society. Are you going to do
25 it on this kind of evidence? Are you going to do it on the

1 testimony of these people that came in here and testified to
2 you and admitted they lied, not only to the Judge, my God,
3 if a person will lie to the Judge, you think they're going
4 to hesitate to lie to a police officer? Do you think
5 they're going to bat an eye about lying to you? No, ladies
6 and gentlemen.

7 Please, please consider this evidence carefully.
8 Please apply reasons to any doubt you might have. Ray
9 Cromartie, you may write the last chapter in his book. Are
10 you going to do it on the words of these people? I ask you
11 not to. I ask you to find him not guilty of all these
12 offenses, ladies and gentlemen. Thank you.

13 THE COURT: Mr. Hardy?

14 MR. HARDY: Please, Your Honor. Mr. Mears. Mr.
15 Bryant.

16 I don't have somebody to stand up and introduce,
17 because you know why? Mr. Slys is dead. Richard Slys is
18 gone. He doesn't have any more chapters in his life to
19 write. He's dead. And his life is taken away from him for
20 nothing. His life was taken away from him for twenty-two
21 beers, twenty-two Budweiser, twelve ounce beers, two hundred
22 and forty ounces of beer. His life was lost for that.

23 I'm going to show you his picture. I don't want you to
24 forget him. Let me make one point. I'll refute some of the
25 points he made earlier. But do you remember Mr. Taylor said

1 the man who was riding in his car was Mr. Walsh? And where
2 did Mr. Walsh work? Mr. Walsh was the manager of the
3 Domino's Pizza place in Thomasville where Mr. Lucas worked.
4 Rhetorical question. The man, he had a hat on wearing a
5 Domino's Pizza uniform and he worked for him, do you think
6 he'd said, that's Thaddeus Lucas? Certainly he would have.
7 It wasn't Thaddeus Lucas. That's a red herring he's trying
8 to throw out at you.

9 Right from the road to where he saw him, he'd have
10 said, that's Thaddeus Lucas. It wasn't Thaddeus Lucas
11 because Thaddeus Lucas wasn't there. That's a red herring
12 he just threw out at you. You heard Mr. Walsh, where he
13 worked. And he was the manager of that place; wasn't he?
14 That's just a red herring.

15 Excuse me a minute. I agree with another thing. When
16 Mr. Mears said when he started, he said, lawyers get kind of
17 scared. Lawyers are paranoid, Mr. Mears. All lawyers are
18 paranoid and they're scared. I'll admit that. I'm paranoid
19 a lot. He is too. Probably Mark and maybe Carl is
20 sometimes. We get kind of scared sometimes.

21 I want you to look at the totality of the evidence. I
22 don't just want you to look at one point. Look at the whole
23 evidence. The State wants you to look at all of the
24 evidence. Look at everything.

25 Shot in the head, cleaned up version. Shot in the side

1 of the head, cleaned up version. See the little marks
2 around the head. Shot in the head, uncleaned up version.
3 Dan Wilson, shot in the head, uncleaned up version. You saw
4 the cleaned up version in court.

5 How do we know they took the twelve -- two twelve packs
6 of beer? Look at these pictures. Look at the beer cooler
7 back there and you can see where two twelve cartons of beer
8 were, and you can see where the bar has been slid across.
9 Proves two twelve packs of beer, look at the picture, are
10 missing, gone from the store.

11 Look at the beer flap again outside. Hutchinson -- had
12 been raining; hadn't it? The beer flap had no rain on it,
13 had no condensation. He said, "It was dry when I got it",
14 clean. Hadn't been out there that long. Out there -- it
15 had rained earlier, but that beer flap got there when these
16 cans were dropped, I submit to you.

17 Mark mentioned to you earlier about reasonable doubt.
18 A reasonable doubt is not a vague, far flung, fanciful or
19 imaginary or capricious doubt. It's a doubt you can put
20 common sense to. Each of you, ladies and gentlemen, bring
21 common sense into the courtroom. You use it every day of
22 your life, every day, everything you do. Some of you have
23 children; some of you don't. You have to judge life by
24 common sense. There's the old story I like to say about
25 giving an example of circumstantial evidence. You have a

1 child and your wife cooks cookies and she puts the cookies
2 up there. They might be Oreos. She might buy Oreos or
3 something. And say, don't bother the cookies, boy, girl.
4 Yes, ma'am; I won't bother those cookies. I'm not going to
5 bother them. And then you leave the room and lo and behold
6 you come back in and that lid is tilted a little a bit.
7 And, well, the kid must have bothered those cookies. Well,
8 you go over there and look and there's a chocolate line
9 around the mouth. You go up to little Johnny, and say,
10 "Johnny, did you eat the cookie"? "No, ma'am, I didn't eat
11 the cookie". "Well, Johnny, where'd you get that little
12 mark around" -- "Mama, I didn't eat the cookies". Well, he
13 has to get confronted a couple of times and he says, "Yes,
14 mama; I ate the cookies". Now, that's human nature. People
15 fudge a little bit to start with and then they say, "Well,
16 you've got me. Let's go over it".

17 Mark told you a reasonable doubt, you know, it's not --
18 you know, I may -- somebody in the world may say, hey, the
19 sun's not going to shine tomorrow. That may be a doubt but
20 it's not reasonable. The moon's not going to rise tonight.
21 That's a doubt but it's not reasonable.

22 There are two kinds of evidence. Direct evidence is
23 what you see. You see the flag. You see the wall. You see
24 it with your own eyes. Circumstantial evidence is putting
25 two and two together. The old story that Mark gave you that

1 it snowed last night, you have a cat, you go outside and you
2 see cat prints going over the roof. Last night after it
3 snowed the cat walked over the car. Simple. Common sense
4 is all that is. Putting two and two together.

5 Reasonable means sensible, intelligent, wise,
6 equitable. You may hear lightning. You didn't see the tree
7 get struck, but you ride by a little later and all the
8 leaves are dead and there's a big line down the tree. The
9 tree got struck by lightning. That's putting two and two
10 together. That's common sense. That's all that is. It's
11 reasoning. It's putting circumstantial evidence together
12 with direct evidence. You may have heard it a mile away and
13 you see it. That's all that is.

14 Reasonable doubt is a sound, sensible, logical doubt
15 based on evidence in the case. It's not some far flung,
16 fanciful thing.

17 Some of the points Mr. Mears -- About, about the pizza
18 man. You know, you used to watch TV a long time ago and
19 Dandy Don Meredith used to say, if, if, and, and, were canned
20 as nuts, oh what a happy Christmas we would have. If all
21 the ifs and all the ands and all the buts that we want to be
22 true were true, then we'd have a happy time. But that's not
23 the way life is.

24 Look at the evidence. Look at -- We want you to look
25 at the evidence. The State wants you to look at the

1 evidence and look at the facts.

2 He's assuming where the man was shot in the head with
3 the gun. I think his assumption is he came right up here
4 (indicating) and shot like that. You've seen people where
5 they shoot guns and they shoot them like that, where they
6 shoot them like that, shoot them like that. Those shell
7 casings are going to go out that way. When you lean way
8 over the counter shooting within six inches, those shell
9 casings are going to go that way. And they're just not
10 going to stop. They're made out of metal. You've got
11 linoleum floors in a store, you've got concrete in a store.
12 What are they going to do? They're going to bounce around.
13 They're going to bounce around. They're not just going to
14 stop stationary right where they hit. They're going to
15 bounce. You go up within six to nine inches of that man's
16 head where he was shot, I think the evidence is going to
17 show he was shot through the glasses first, not through the
18 side of the head. Shot through the glasses, bam, bam. The
19 man's head turns, reflex, gets shot in the side of the head.
20 Those shell casings are going to go, bounce over there.
21 They're going to ping around and then finally stop.

22 What was on that counter that Ken Collins found? He
23 found the glasses fragments in these photographs. Take the
24 time to find them. You'll be given a chance to see. You'll
25 see the counter and on the counter there was glass

1 fragments. And on the counter right in front of him where
2 he shot him is the blood. You have other pictures showing
3 the glasses, glasses, from his glasses where he was shot
4 through the glasses on the counter. If it'd been as he's
5 trying to say, the glasses, the glasses wouldn't have been
6 on the counter. The glass would have been on the floor
7 somewhere.

8 The man had a pencil in his hand. More than likely
9 left handed because the pencil was in his left hand. That
10 pencil did not move out of his left hand. He was shot so
11 quick by that man coming up on him. He wasn't scared. I
12 submit to you he wasn't frightened. He was there doing his
13 paperwork on that seat behind that counter. Wasn't
14 frightened by the men coming in the store. He had a gun on
15 his side. He didn't even have a chance to go for his gun,
16 nor this gun. He was protecting himself because he was
17 working the graveyard shift. What had happened three days
18 earlier in Thomasville? He wasn't scared. He was caught
19 totally unaware as to what was going on. He was shot in the
20 head twice before he could do anything. The pencil was
21 still in his hand there doing his work. And you'll see the
22 papers over here where he was sitting in that chair. Where
23 the man just reached across and popped him and popped him
24 and ran back to the beer. Because what did Mr. Seitz say?
25 Mr. Seitz said he saw the light colored man running right

1 after he heard the two cracks; didn't he? Running back to
2 the back of the store. Very consistent. Is that consistent
3 to Corey Clark's story? I submit to you it is.

4 Right after Mr. Seitz said he saw the light colored man
5 running to the back of the store, he went and called 911,
6 and then he saw the darker man stand up, the taller man.
7 And he saw -- then he -- Mr. Seitz said the light skin
8 colored man of the two came out of the store with the beer.
9 And Mr. Clark said he went back there to get the beer.

10 You'll have the photographs of Mr. Cromartie and Mr.
11 Clark to look for yourselves as to which is the lighter of
12 the two. We've already had witnesses testify. Mr.
13 Cromartie, shorter of the two and lighter of the two. This
14 is the way they look. Corroborates Mr. Clark's story.
15 Corroborates what Mr. Seitz said.

16 Mr. Taylor. Mr. Taylor said -- We called Mr. Allen
17 back and we hashed back and forth with the testimony. The
18 testimony was that he saw the man walking out of the store
19 first and then start running. The footprints that Mr.
20 Collins said were some distance back there from where the
21 beer cans were? Look at the pictures of the store. Walking
22 first, find the prints. Then they start running, drop the
23 beer, find the tab, find the beer. Consistent with what
24 Taylor said. You'll have a chance to look at the plaster
25 casts if you so desire. Look at the pictures. You've seen

1 the pictures earlier and you've seen the shoeprint earlier.
2 You'll have an opportunity to view the herringbone outline
3 for yourself. You can look at the other three pair of shoes
4 if you so desire. Two pair of Nike, Nike, one pair of
5 Converse All Stars, totally different. Totally different.

6 Jim Howard gave his expert opinion about it, but any
7 lay person can look at them too. Any person can look at
8 them if they want to.

9 Play the whole tape, people coming and going out of the
10 store buying stuff, buying stuff. To get to the point where
11 the man comes in through the door. Dan Wilson had turned a
12 little key, you saw on the video where he turned a little
13 key half a little bit. He was back there washing pots and
14 pans. On the video you can hear the pans, cling, clang,
15 clang, clang, clang, clang. And he's back there washing
16 pots and pans in the video. Bam. The man comes back around
17 and hits some of the keys, hits some of the keys trying to
18 money out of the cash register. He comes back around and
19 says, get down, something to that effect, and runs out of
20 the store. You saw the video. You saw the still photos.
21 Did you look at the man on the video? Did you notice the
22 size of his nose? Did you notice the part of the face you
23 could see? Did you notice the size of his nose?

24 Mr. Cromartie -- Do you see the nose? Is it a large
25 nose? Do you remember looking at the video, seeing the man

1 in the slowed down version, where you could see the man up
2 there, you could see his light complexion, you could see the
3 nose? These still pictures that the F. B. I. man came,
4 seems like it's been an eternity since he testified, just
5 Monday. These pictures, you can see the man's nose in the
6 video. Prominent feature in the photograph, the nose.
7 You'll have a chance to look at it.

8 Couldn't get in that cash register. Came out to the
9 second store, robbed it, couldn't get in that cash register.
10 But he was going to get something. That's why he stole
11 beer. He wasn't successful. The register wasn't -- the
12 first time. Wasn't successful with the first pop. Let's
13 get something. Let's get some beer. That's why ole Clark,
14 the drunk, thought they were going out there, was stealing
15 beer. First they had him under cross examination. He was
16 too drunk to know what he was doing. Now, he's so smart he
17 kills people. They can't have it both ways. He's a drunk
18 going to get beer, Clark. Yep, let's go get some beer.
19 Riding with Mr. Cromartie. Mr. Cromartie, they didn't know
20 had the gun. Mr. Cromartie shot. Doesn't ask any
21 questions. Did he ever say, give me your money, give me
22 some beer or I'll shoot you? Did he ever give any warning
23 to the man, either one? Shot him in cold blood, both of
24 them. So he ran to get the beer. And the other man, he
25 said he heard the shots. Clark said, "The man had a gun. I

1 saw the flash. I'm not going to disagree with a man who's
2 got a gun. The man told me to jump, I jumped. The man
3 tells me to get to the cash register, I get to the cash
4 register. I wasn't going to argue with the man with the
5 gun".

6 I submit to you he must have made a feeble attempt
7 because there were bags of money laying in eyesight if he'd
8 looked. He was just wanting to get out of that store, I
9 submit to you.

10 They've got a conspiracy theory. That's what you go to
11 defense lawyers' school. They teach you. It's called the
12 red herring theory. And the red herring theory is, let's
13 get them to chase those red herrings over there, or let's
14 take the shotgun theory, shoot the shotgun in the wall and
15 see which one of the pellets they'll run for, or the seal-
16 octopus theory. You know, an octopus is an animal in the
17 ocean that doesn't have any teeth and it doesn't have any
18 hands, but it's got a big bag and when it wants to get away
19 it shoots out all this dye into the ocean so it just scoots
20 away so nobody will bother it. So let's shoot the red dye
21 out there, or purple dye.

22 They've got a conspiracy theory and want to say all
23 these people -- and I submit -- I'm not talking bad about
24 them, but a lot of them are not too smart. Don't have
25 enough sense to get together and get a big conspiracy theory

1 to blame poor ole Ray Jefferson Cromartie. Or they want the
2 theory to be that they're so drunk that they don't know what
3 they're doing one time but they know what they're doing the
4 next time, or they're so smart they get together and concoct
5 stories, or what else can we think of next.

6 And he's talking, well, why didn't they take the dog
7 when they found the shirt. Henry Williams testified to you
8 unless the area is contaminated, if it's contaminated
9 there's no use running the dog. If this shirt was found,
10 what did the man say, 10:00, 11:00 o'clock the next morning
11 on a busy street in front of my house. I submit to you,
12 would that have been contaminated? Would it have been worth
13 Henry Williams' time? For an area not roped off, not put
14 any tape, many hours after the crime.

15 Carnell Cooksey. He didn't say anything about Friday
16 night, Mr. Mears. Do you remember the testimony, Friday
17 night, what Carnell Cooksey said happened Friday night? Do
18 you have your notes? Do you remember the words, one eighty
19 seven? That this man over here is saying, let's go do a one
20 eighty seven, an armed robbery, trying to get Carnell out
21 there to commit a crime on Friday, talking it up, talking
22 about it.

23 Tina Washington. Let's talk about April the 7th. Tina
24 Washington, just a mother of two, trying to make for
25 herself. She does know Gary Young. If she was going to

1 lie, she'd have lied a lot better than she lied. All she
2 said was, "I was up asleep and had to go work at Kenro the
3 next day and there was a knock on the door and Gary goes
4 down and gets the gun and gives it to Jeff". And Carnell
5 Cooksey says the same thing. The man came over, Mr.
6 Cromartie, to borrow the gun. They let him borrow the gun
7 and we leave. That's all she said. She didn't come up here
8 to you, well, this and that, this and that and the other.
9 She knew a limited portion. All she knew about was the
10 borrowing of the gun.

11 Tonya Frazier. Her limited purpose was the next
12 morning, on Sunday morning, she saw the beer. She saw the
13 beer was dirty and she thought it was kind of unusual. She
14 asked where they got the beer. Gary. Mr. Cromartie. The
15 other people. They said something, laughed or whatever,
16 didn't tell her. If it was such a big conspiracy theory,
17 she'd come up and said all these things to implicate poor
18 Jeff. But, no, all she had to say was about the beer.

19 And Gary throwing the gun. Gosh, he was trying to hide
20 all those other crimes. Well, he sure is a stupid criminal
21 if he throws the gun right in front of the Thomasville
22 Police Department. The testimony, I think, was that the
23 police were coming up in their cars and he threw the gun
24 away. He didn't have time to think about anything else. He
25 was just throwing the gun away because he'd just shot the

1 gun in the air and that's why the cops were coming. He
2 wasn't thinking about anything else. If he was a cold,
3 calculated person like Mr. Mears wants him to be, he could
4 have throw it in Cherokee Lake or ten thousand other places
5 the two or three days that he had to throw it.

6 Mr. Clark and Mr. Lucas were given a deal. They've
7 been punished by the Court. They're under the sentence of
8 the Court. They testified about their involvement in this
9 particular case. Mr. Lucas happened to own the car. Mr.
10 Clark didn't have a car. Mr. Cromartie didn't have a car.
11 Other people didn't have a car. Mr. Lucas was the man
12 working the two jobs, Shoney's and Domino's Pizza. I think
13 from Mr. Mears' testimony these people had been sitting
14 around drinking beer that Saturday, talking, talking, didn't
15 have a ride. Then Lucas comes home well after midnight.
16 And what does Mr. Lucas say? It's that man's brother right
17 there. He says, "He asked me once to take him. I told him
18 no. He asked me twice to take him. I told him no. He
19 asked me again. He kept asking and finally I just said I'll
20 do it". What does he say? He starts to drive toward the
21 place that's open after midnight the closest, Food Max,
22 because he thinks he's taking them to get some beer. But,
23 no, don't go to Food Max because Jeff's sitting in the front
24 seat, says, go out Jackson Street to the Junior Food Store.
25 I think the testimony was Jeff told him where to go. Jeff

1 told him on what side of the store to stop. And Jeff told
2 him to go where to park, where we'll meet you when we come
3 back. Who's directing traffic? Jeff Cromartie.

4 If Thaddeus was going to tell a big lie, he'd have
5 said, "Yeah, I saw him with the gun. He told me he was
6 gonna rob the place". No. Mr. Lucas says, "I didn't never
7 see the gun. I didn't know they were gonna rob the place".
8 He lets them out. Drives over there to Providence Plaza and
9 parks. I think Mr. Clark's story was, his testimony was,
10 that we went to the back of the store area, walked over
11 there to try to see if there was anybody around. He said, I
12 think his testimony was there was a car out front and we
13 waited till the car left and then we went around front, he
14 thinking they were going to steal beer. He's a drunk. The
15 testimony is he likes to drink and he wanted to steal some
16 more beer, to drink some beer because he's an alcoholic.

17 And when he went in the store, where was the man he
18 wants to steal the beer to drink it go? To the beer cooler.
19 So he goes back to the beer cooler to get the beer so he can
20 steal it so he can leave. That's what the testimony is.
21 And the other man, Mr. Cromartie, the man who had already
22 shot one man in the head, the man who didn't die. And I
23 think the testimony from Mr. Cooksey was, what did this man
24 ask the day, day or so after the tele, did you watch the
25 news, did you see the news, did you see what was on the

1 news?

2 And I submit to you why did he shoot him twice in the
3 head? The first man didn't die from just one shot to the
4 head. Let's make sure this one dies, shoot him twice.
5 Don't shoot him in the arm and wound him, shoot him
6 somewhere in the chest. Shoot him in the head and kill him.
7 Without asking him one question, saying one thing to him.
8 Just killed him. And then he can't get in the register
9 because he couldn't get in the other register. Maybe he's
10 paranoid about can't get in cash registers. Said the other
11 dude come up and see if he can get in the cash -- the drunk
12 one. And the drunk one who's heard the shots testified he's
13 scared. So the other man, the short man, gets the dude, the
14 lighter skin man gets the dude, gets the beer, goes out of
15 the store first. That's what the testimony was. That's
16 what Mr. Taylor saw and Mr. Seitz saw. The taller man then
17 comes out. Mr. Taylor said it. Mr. Seitz says he heard the
18 bam, bam shots and the lighter skin man goes back to the, to
19 the left -- to the right, to the right of the store from
20 over here where the counter is, where the man was shot.
21 It's consistent with what he saw and what he observed, and
22 the walking and then the running.

23 Henry, Henry Williams comes out. Henry Williams is
24 called out with the dog. And Henry Williams says it was a
25 fresh track. It was a real fresh track. I think Henry said

1 something about, real fresh track. His dog, Pete, follows
2 that track, saw those shoeprints, saw that beer, saw the
3 prints coming and going, he said. He tracked it all the way
4 over there to Providence Plaza, down Pinetree Boulevard, the
5 paved road. You can see that in the pictures too. And the
6 dog starts going around in circles, where he thinks the dog
7 has lost his track, where they got in the car, where they
8 left. And he comes back, shows it to Ken Collins, and the
9 beer flap is -- the beer flap is with, what, five or ten
10 feet to the beer cans. Which is first? The cans or the
11 beer? Like the chicken and the egg. The beer flap is
12 first. The beer flap is first because the carton broke.
13 When the carton broke, you keep running, you've got the
14 beer. Common sense.

15 I submit to you they didn't pick the beer up in the mud
16 because they didn't want to get their feet muddy. Just like
17 Tayler said he didn't want to get his feet muddy. They
18 picked all the other beer up that fell out, whatever fell
19 out. That beer flap there wasn't rained on. You can look
20 at it and see the condition of it. The man's left, excuse
21 me, left thumbprint's on it. That man right there. A
22 matter of feet where the beer cans were. Not that far from
23 where the foot, foot tracks were. Not that far from where
24 the store is.

25 The same gun, that 162, Number 162, that .25 caliber

1 Raven .25 caliber pistol shot both men. Dr. Howard
2 testified about it. He went through all those bullets and
3 where they came from. Dr. Hall got that one bullet out of
4 Mr. Wilson's head, went through his head, his right carotid
5 artery. Dr. Hall, I think testified that that right carotid
6 artery, "I just tied it off". He'll never have use of that
7 carotid artery again. He's only got three sources of blood
8 to his brain now. One, two, three. Two other major veins
9 and one artery. He's subject to having a stroke any ole
10 time. I submit to you that's aggravated battery.
11 Aggravated battery. He's lost the use of his carotid artery
12 for the rest of his life. He didn't die.

13 And this gun, Dr. Parker came down and testified about
14 the taking -- that man was shot twice in the head, .25
15 caliber bullets was taken. Jim Howard took the casings and
16 the bullets, concluded they, all of them were fired from the
17 same gun, 162, that .25 Raven caliber pistol. Both guns
18 shot both people. Killed one. Severely wounded another.

19 When it happened on the 7th, the cops didn't know who
20 did it. But they found that shirt, they found that hat.
21 8th, 9th, 10th, early morning of the 10th they were called
22 again. I submit to you they realized that two clerks had
23 been shot in a matter of days. 11th, 12th, and then they
24 have this shooting over at Cherokee. And as Mr. Mears
25 brought out on cross, the police started investigating it

1 and start talking to everybody they think may give them some
2 leads. Any kind of case that's brought in, they start
3 talking to folks. Talking to people around the community.
4 They talked -- Carnell Cooksey happened to be in jail, and
5 Winkelman, he was a detective at that time, talked to
6 Carnell Cooksey. And Carnell Cooksey then started telling
7 them about things. Carnell Cooksey, names and dates and
8 players. Carnell Cooksey told them where the gun was and
9 they went outside and found it out at Cherokee, just a
10 matter of feet from the police department. I think the
11 testimony was it was just a matter of feet from the chief's
12 office, across the railroad track. It was immediately sent
13 off to the crime lab and tested with the casings and the
14 bullets that had already been sent off to find out if that
15 was the gun and it was.

16 And the police then start trying to put two and two
17 together. They had some facts from Cooksey. They talked to
18 Clark who had already been taken into custody to find out
19 what he had to say. And then from those people, it leads to
20 other people. Then they go out the next day and arrest Mr.
21 Cromartie, Mr. Lucas and Mr. Young. They keep them
22 separated. I think the testimony was they're all separated
23 and every one of them were talked to by different detectives
24 so there wouldn't be any contamination of what they said and
25 who they said it to. Each person was talked to by a

1 different detective and each person was kept separated so
2 they couldn't talk to each other. So the detectives then
3 talked to each of the people getting their bits and pieces
4 from each person, because everybody doesn't see the same
5 thing the same way. I may look at that lady and say she's
6 got red on her shirt. Somebody else may say it looks
7 orange. General stories, the general view may be the same
8 but some of the variances may be a little different.

9 So the police then talked to everybody involved to get
10 their side or their facts about the story to use in their
11 investigative techniques. That led to the various charges.

12 Mr. Slyszy was doing his paperwork, sitting in his
13 chair, 3:30 in the morning with a pencil in his hand when he
14 was shot in the head for no reason. The glass is on the
15 counter. You can see it in the pictures. The blood is on
16 the counter. You can see it in the pictures. He was shot
17 so quick, the two bullets, fell over dead. I think the
18 doctor said he was brain dead essentially but his heart was
19 still pumping. When he was laying there on the floor his
20 heart kept pumping. The pictures, you'll see the chair, the
21 counter. He was laying right over here.

22 I want you to look at the totality of the evidence.
23 It's just not this or not that or not that. It's all the
24 evidence the jury is asked to look at. The fingerprint, the
25 shoeprint, the testimony of Dr. Hall, Dr. Parker. Tina

1 Washington, the young mother of two, said Jeff came over to
2 borrow the gun. Cooksey who said, yes, Jeff came over to
3 borrow the gun. Yes, "Jeff asked me to do a one eighty-
4 seven on Friday", an armed robbery. I think he also said
5 Jeff told him about shooting the man. Then on Saturday
6 night he saw them with the beer, saw them with the beer. He
7 was a drunk. He didn't go out to the Junior Food Store -- I
8 think the testimony was he was drunk on the sofa at the time
9 that they left.

10 There are four distinct different pairs of shoes these
11 people seized when they were arrested. And Mr. Taylor's
12 testimony this morning that Mr. Allen read said that the man
13 that came out of the store first was wearing white high top
14 shoes. White high top shoes with the herringbone.

15 It was Gary Young's gun all right. But the person who
16 borrowed and shot people with it was Ray Jefferson
17 Cromartie. Corey Clark talked about stealing beer. That's
18 all he thought they were doing. That's why he went. That's
19 what got him in trouble. Wanting beer. I think the
20 lighting out there from Mr. Taylor and Mr. Seitz, the lights
21 out there on the gasoline aisle, the lights in the street,
22 the lights in the store, plenty of light for them to see
23 whatever it is they saw. Seeing the two men running away
24 from the store.

25 Mr. Fingerprint Man. I can't even think of his name

1 right now. I apologize to you. The fingerprint man. He
2 made a big -- said he'd never made a mistake. What his
3 testimony -- you remember what his testimony was, that he's
4 not made a mistake as to identification. "Yes, I've made
5 other mistakes in life". But he's careful about his
6 identification. I think his testimony was he wants nine
7 points minimum before he'll say somebody is that person's
8 fingerprint. It's not a flippant thing to do. If it's
9 seven, there are six, not going to do it. Five, not going
10 to do it. Must be at least nine. Makes mistakes about
11 other things, but his testimony was he's going to have at
12 least nine points. He charted for you ten points on State's
13 Exhibit Number 166. But he said to you that he found
14 fifteen points of comparison between the beer flap print,
15 left thumb of Mr. Cromartie and the known print. Not nine,
16 not ten, not eleven, not twelve, not thirteen, not fourteen,
17 but fifteen points. Fifteen points. Going to have his
18 minimum and then more than the minimum to make sure of what
19 we say.

20 Both crimes, both crimes were committed at night. Both
21 crimes were committed with the clerk alone in the store.
22 Both clerks were shot in the head. One once and one twice.
23 I think it's a logical deduction for you -- you can use
24 whatever deduction you want. The first man was shot twice
25 and the second man was shot two times. Both of them were

1 fairly quick. Both of them, the registers were pecked on to
2 try to get money but no money was gotten. The second one,
3 two twelve packs of beer were taken. Twenty-two beers
4 eventually were gotten away with. Two left in the mud. Two
5 people almost lost their lives. One did, Mr. Slys.

6 You have a fingerprint. This jury will say, hey, you
7 don't have fingerprints. Oh, you don't have eyewitnesses.
8 Oh, you don't have shoeprints. Oh, you don't have
9 eyewitnesses. Oh, you don't have other witnesses. Oh, you
10 don't have this. Oh, you don't have that.

11 Ladies and gentlemen, in this case you've heard a
12 fingerprint expert, a shoeprint person. You've heard from
13 Mr. Seitz. You've heard from Mr. Taylor. You've heard from
14 the ballistics from Mr. Howard. You've heard from Mr.
15 Clark. You've heard from Mr. Lucas. You've heard from Mr.
16 Young, whether you want to believe him or not, I submit to
17 you, told you details about the crime told to him by Mr.
18 Cromartie. You've heard from Tina Washington. You've heard
19 from Tonya Frazier. All their testimony leads to the
20 conclusion that this man right here is the one who shot Dan
21 Wilson in the head, who shot Mr. Slys in the head and ran
22 out of the store with beer.

23 Sometimes a little bit of evidence may point to
24 somebody, this piece or that piece. But in this case all of
25 the evidence points towards Ray Jefferson Cromartie as being

1 the one who did both shootings. You can guess and surmise
2 and say, oh, it must have been this or it must have been
3 that, or I wish it were that way or I wish it were that way.
4 Mr. Mears can wish and wish and wish.

5 He said that that shirt belonged to Gary Young. There
6 wasn't any evidence that that shirt belonged to Gary Young.
7 The testimony was that Gary Young said -- Mr. Mitchell
8 impeached him. That Mr. Cromartie told him that that's what
9 he was wearing and that's what he'd thrown down there after
10 he ran away from the crime. And you can look in the video
11 and see whether or not that's consistent with this shirt
12 right here and the black toboggan hat. Look at the
13 pictures. You won't get a chance to look at the video
14 outside. Look at the pictures and see whether it's
15 consistent in your minds.

16 Their theory is, let's blame Gary Young for everything.
17 He's not a very nice person. He's not a very nice person.
18 I submit to you he's not very smart either. Gary Young told
19 you what his cousin told him, his best friend, the man he
20 palled around with and associated with, the man that he let
21 borrow the gun.

22 If it's human nature for people to be totally quiet
23 about what they do, it goes back to the story about the kid.
24 Some people go through life and never tell anybody about
25 anything. I submit to you Mr. Cromartie needed to tell

1 somebody about what he had done after he did it, and the man
2 he borrowed the gun from is the one he told. Just have to
3 tell somebody, watch the news, watch the news. Callous,
4 cold, indifferent. Shoot two people in the head for
5 virtually nothing, twenty-two beers.

6 The State of Georgia wants to thank you for your time
7 and your patience. Listen to the charge that Judge Horkan
8 will give you, whether it be today or tomorrow, and base
9 your verdict upon the law that the Judge will give you and
10 the facts and the evidence which you've heard from the
11 witness stand. This man right here, that man right there in
12 the blue shirt shot the two people, the State submits to
13 you, in the head. Thank you.

14 Excuse me, Your Honor.

15 THE COURT: Yes, sir.

16 Ladies and gentlemen, based upon the time of day and
17 the length of time I anticipate that the legal instructions
18 are going to take, I feel like it's a good idea for us to
19 recess for the evening and come back tomorrow morning at
20 9:00 o'clock. You'll be alert. Not that you're not alert
21 at this time. But you'll be alert and we can give you the
22 legal instructions at that time.

23 Let me remind you that although the evidence has been
24 concluded insofar as this particular stage of the
25 proceedings, that you are still not to have any outside

1 influence whatsoever in regards to this particular matter.

2 Again, do not talk with anyone about this case. Don't
3 let anyone talk with you about the case or in your presence
4 or hearing. Don't listen to anything about the case, radio,
5 TV or otherwise. Don't read anything about the case,
6 newspaper or otherwise.

7 In addition, please recall the instructions I gave you
8 concerning, if you go down Madison Street, do not look at
9 the deli. If you go down Pinetree Boulevard or Jackson
10 Street, do not look at the area or where the Junior Food
11 Store was at that time. I believe it's a Petro store at
12 this time.

13 Any further cautionary instructions requested on behalf
14 of the State?

15 MR. HARDY: No, Your Honor. Thank you.

16 THE COURT: Or the Defense?

17 MR. MEARS: Nothing further.

18 THE COURT: Everyone please remain seated while the
19 jury retires.

20 See you at 9:00 o'clock tomorrow morning.

21 (Whereupon the jury retires from the courtroom,
22 after which the following transpired)

23 THE COURT: We'll be in recess until 9:00 A. M.

24 (Whereupon the Court is recessed for the day, with the
25 proceedings to be resumed the following A. M.)

C E R T I F I C A T E

STATE OF GEORGIA

COUNTY OF LOWNDES

I hereby certify that the foregoing proceedings were taken down by me, as stated in the caption, and that the foregoing pages 2549 through 2817 represent a true, correct, and complete transcript of said proceedings.

I further certify that I am neither of kin nor counsel to the parties in this matter, nor am I financially interested in same.

This the 17th day of November, 1997.

Philip G. Vincent

PHILIP G. VINCENT, C.C.R.
CERTIFICATE NO: A238
OFFICIAL COURT REPORTER
SOUTHERN JUDICIAL CIRCUIT

IN THE SUPERIOR COURT OF THOMAS COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

CRIMINAL ACTION NO: 94-CR-328

VS

CHARGE: AGGRAVATED ASSAULT
(COUNT 1);

RAY JEFFERSON CROMARTIE
DEFENDANT

POSSESSION OF A FIREARM
DURING THE COMMISSION OF
A CRIME (COUNTS 2,4,6,8);
AGGRAVATED BATTERY
(COUNT 3);
MURDER (COUNT 5);
ARMED ROBBERY (COUNT 7)

CRIMINAL JURY TRIAL UNDER THE
UNIFIED APPEAL PROCEDURE

The following transpired before the Honorable Frank D. Horkan, Judge, Superior Courts, and a Jury, in the Thomas County Courthouse, Thomasville, Georgia, with voir dire and selection of the Jury commencing at 9:35 A. M. on Monday, September the 15th, 1997, and concluding at 10:20 A. M. on Friday, September the 19th, 1997, and the case-in-chief commencing at 10:50 A. M. on Friday, September the 19th, 1997, and concluding at 10:40 A. M. on Wednesday, October 1st, 1997.

APPEARANCE OF COUNSEL:

Representing the State: James E. Hardy, Esq.
Mark E. Mitchell, Esq.
Assistant District Attorneys

Representing the Defendant: Michael Mears, Esq.
Carl A. Bryant, Esq.
Gerard Kleinrock, Esq.

VOLUME IX OF TEN VOLUMES

(This volume contains the proceedings of Friday, September the 26th, 1997, from 9:05 A. M. to 3:10 P. M.; Monday, September the 29th, 1997, from 9:05 A. M. to 5:00 P. M.; Tuesday, September the 30th, 1997, from 9:00 A. M. to 5:00 P. M.; and Wednesday, October the 1st, 1997, from 9:00 A. M. to 10:40 A. M.)

1 (The tenth day of proceedings commences at
2 approximately 9:05 A. M. on Friday, September the
3 26th, 1997, outside of the jury's presence)

4 THE COURT: All right. You may bring the jury --
5 Anything to address before we bring the jury in, ladies and
6 gentlemen?

7 MR. HARDY: No, sir.

8 MR. MEARS: No, sir.

9 THE COURT: You may bring the jury in.

10 (Whereupon the jury returns to the courtroom,
11 after which the following transpired)

12 THE COURT: Good morning, ladies and gentlemen.

13 Ladies and gentlemen, those of you in the audience and
14 otherwise, let me inform you at this time that once we begin
15 the instructions of the law to the jury, no one will be
16 allowed to either enter or leave the courtroom. The purpose
17 of that is so that the jury is not distracted during these
18 legal instructions. So if anyone does not wish to remain
19 during the entire instructions, has some other matters which
20 need your attention, I'll give you an opportunity at this
21 time to excuse yourself prior to my beginning the legal
22 instructions.

23 Ladies and gentlemen, the first thing that I need to do
24 is inquire as to whether or not over the evening recess any
25 of you have read anything, or seen anything in print about

1 this particular case, whether or not you have heard anything
2 about it, whether or not you have talked with anyone about
3 this case, or anyone has attempted to talk with you about
4 it?

5 Thank you, ladies and gentlemen.

6 * * * * *

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, you have been considering the case of the State of Georgia versus Ray Jefferson Cromartie.

Now, the Defendant in this case has been indicted by the Grand Jury of Thomas County, count one, for the offense of Aggravated Assault; count two, four, six and eight, for the offenses of Possession of a Firearm During the Commission of a Crime; count three, the offense of Aggravated Battery; count five, the offense of Murder; count seven, for the offense of Armed Robbery.

This indictment was returned in open court on October the 20th, 1994 and is as follows: "The Grand Jurors selected, chosen and sworn for the County of Thomas, whose names appear in this bill of indictment, in the name and behalf of the citizens of Georgia, charge and accuse Ray Jefferson Cromartie with the offense of Aggravated Assault, for that the said accused on or about the 7th day of April, 1994, in the county aforesaid, did then and there unlawfully, knowingly, willfully and intentionally make an assault upon the person of Dan Wilson with intent to rob, contrary to the laws of said state, the good order, peace and dignity thereof."

Count two: "And the Grand Jurors aforesaid on their oaths aforesaid in the name and behalf of the citizens of

1 Georgia charge and accuse Ray Jefferson Cromartie with the
2 offense of Possession of a Firearm During the Commission of
3 a Crime, for that the said accused on or about the 7th day
4 of April, 1994, in the county aforesaid, did then and there
5 unlawfully, knowingly, willfully and intentionally have on
6 his person a certain firearm during the commission of a
7 crime, to wit: Aggravated Assault, said crime being against
8 the person of another, to wit: Dan Wilson, and which crime
9 was a felony, contrary to the laws of said state, the good
10 order, peace and dignity thereof."

11 Count three: "And the Grand Jurors aforesaid on their
12 oaths aforesaid in the name and behalf of the citizens of
13 Georgia charge and accuse Ray Jefferson Cromartie with the
14 offense of Aggravated Battery, for that the said accused on
15 or about the 7th day of April, 1994, in the county
16 aforesaid, did then and there unlawfully, knowingly,
17 willfully and intentionally, maliciously cause bodily harm
18 to the person of Dan Wilson by depriving said person of a
19 member of his body, to wit: by severing his carotid artery,
20 contrary to the laws of said state, the good order, peace
21 and dignity thereof."

22 Count four: "And the Grand Jurors aforesaid on their
23 oaths aforesaid in the name and behalf of the citizens of
24 Georgia charge and accuse Ray Jefferson Cromartie with the
25 offense of Possession of a Firearm During the Commission of

1 a Crime, for that the said accused on or about the 7th day
2 of April, 1994, in the county aforesaid, did then and there
3 unlawfully, knowingly, willfully and intentionally have on
4 his person a certain firearm during the commission of a
5 crime, to wit: Aggravated Battery, said crime being against
6 the person of another, to wit: Dan Wilson, which crime was
7 a felony, contrary to the laws of said state, the good
8 order, peace and dignity thereof."

9 Count five: "And the Grand Jurors aforesaid on their
10 oaths aforesaid in the name and behalf of the citizens of
11 Georgia charge and accuse Ray Jefferson Cromartie with the
12 offense of Murder, for that the said accused on or about the
13 10th day of April, 1994, in the county aforesaid, did then
14 and there unlawfully, knowingly, willfully and intentionally
15 with malice aforethought cause the death of Richard A.
16 Slyszy, a human being, by shooting said victim in the head,
17 contrary to the laws of said state, the good order, peace
18 and dignity thereof."

19 Count six: "And the Grand Jurors aforesaid on their
20 oaths aforesaid in the name and behalf of the citizens of
21 Georgia charge and accuse Ray Jefferson Cromartie with the
22 offense of Possession of a Firearm During the Commission of
23 a Crime, for that the said accused on or about the 10th day
24 of April, 1994, in the county aforesaid, did then and there
25 unlawfully, knowingly, willfully and intentionally have on

1 his person a certain firearm during the commission of a
2 crime, to wit: Murder, said crime being against the person
3 of another, to wit: Richard A. Slyszy, and which crime was a
4 felony, contrary to the laws of said state, the good order,
5 peace and dignity thereof."

6 Count seven: "And the Grand Jurors aforesaid on their
7 oaths aforesaid in the name and behalf of the citizens of
8 Georgia charge and accuse Ray Jefferson Cromartie with the
9 offense of Armed Robbery, for that the said accused on or
10 about the 10th day of April, 1994, in the county aforesaid,
11 did then and there unlawfully, knowingly, willfully and
12 intentionally, with intent to commit theft, take property,
13 to wit: two twelve packs of beer, from the immediate
14 presence of Richard A. Slyszy by use of a certain handgun,
15 the same being an offensive weapon, contrary to the laws of
16 said state, the good order, peace and dignity thereof."

17 And the Grand -- Count eight: "And the Grand Jurors
18 aforesaid on their oaths aforesaid in the name and behalf of
19 the citizens of Georgia charge and accuse Ray Jefferson
20 Cromartie with the offense of Possession of a Firearm During
21 the Commission of a Crime, for that the said accused on or
22 about the 10th day of April, 1994, in the county aforesaid,
23 did then and there unlawfully, knowingly, willfully and
24 intentionally have on his person a certain firearm during
25 the commission of a crime, to wit: Armed Robbery, said

1 crime being against the person of another, to wit: Richard
2 A. Slys, and which crime was a felony, contrary to the laws
3 of said state, the good order, peace and dignity thereof."

4 Now, ladies and gentlemen, to this indictment the
5 Defendant has entered his plea of not guilty and this makes
6 the issue which you have been selected, impaneled and sworn
7 to try.

8 Now, I caution you that the fact that an accused has
9 been indicted by the Grand Jury is no evidence of his guilt
10 and you are not to consider this indictment as evidence or
11 implication of guilt. Neither is the plea of not guilty to
12 be considered by you as evidence in the case.

13 Now, ladies and gentlemen, this Defendant is to be
14 presumed innocent until proven guilty. A Defendant enters
15 upon the trial of the case with a presumption of innocence
16 in his favor and this presumption remains with the Defendant
17 until it is overcome by the State with evidence which is
18 sufficient to convince you beyond a reasonable doubt that
19 the Defendant is guilty of the offense charged.

20 Now, no person shall be convicted of any crime unless
21 and until each element of the crime charged is proven to the
22 satisfaction of the jury beyond a reasonable doubt.

23 Now, the burden of proof rests upon the State to prove
24 every material allegation of the indictment and every
25 essential element of each crime charged beyond a reasonable

1 doubt. There is no burden of proof upon the Defendant
2 whatever, and the burden never shifts to the Defendant to
3 prove his innocence. However, the State is not required to
4 prove the guilt of the accused beyond all doubt.

5 And a reasonable doubt means just what it says. It's a
6 doubt of a fair-minded, impartial juror honestly seeking the
7 truth. It's a doubt based upon common sense and reason. It
8 does not mean a vague or an arbitrary doubt, but is a doubt
9 for which a reason can be given arising from the evidence, a
10 lack of evidence, a conflict in the evidence, or any
11 combination of these.

12 Now, ladies and gentlemen, if after giving
13 consideration to all the facts and circumstances of the case
14 your minds are wavering, unsettled, unsatisfied, then that
15 is a doubt of the law and you should find the Defendant not
16 guilty. But, if that doubt does not exist in your minds as
17 to the guilt of the Defendant, then you would be authorized
18 to find the Defendant guilty. If the State fails to prove
19 the Defendant's guilt beyond a reasonable doubt, then it
20 would be your duty to find the Defendant not guilty.

21 Now, ladies and gentlemen, you must determine the
22 credibility or believability of the witnesses who have
23 appeared before you and testified in this case. It's for
24 you to determine what witness or witnesses you will believe
25 and what witness or witnesses you will not believe if there

1 are any that you do not believe.

2 Now, in deciding or passing upon their credibility, you
3 may consider all of the facts and circumstances of this
4 case, the witnesses' manner of testifying, their
5 intelligence, their interest or lack of interest in the
6 case, their means and opportunity for knowing the facts to
7 which they testify, the nature of the facts to which they
8 testify, the probability or improbability of their testimony
9 and of the occurrences about which they testify. And you
10 may also consider their personal credibility insofar as that
11 may legitimately appear from the trial of the case.

12 Now, when you consider the evidence in this case, if
13 you find a conflict in the evidence you should settle this
14 conflict, if you can, without believing that any witness has
15 made a false statement. However, if you cannot do this,
16 then it is your duty to believe that witness or those
17 witnesses you think best entitled to belief. You must
18 determine what testimony you will believe and what testimony
19 you will not believe in this case.

20 Now, ladies and gentlemen, it's my duty and
21 responsibility to determine the law applicable to this case
22 and to instruct you on that law by which you are bound.
23 It's your responsibility to determine the facts of the case
24 from all of the evidence presented. It then becomes your
25 duty and responsibility to apply the law that I give you in

1 this charge to those facts as you find them to be and make
2 up your verdict in this case.

3 Now, this Defendant is charged with certain crimes
4 under the laws of our state.

5 A crime is a violation of a statute of this state in
6 which there is a joint operation of act and intention.

7 Now, intent is an essential element of any crime and
8 must be proved by the State beyond a reasonable doubt.

9 Now, intent may be shown in many ways provided that you
10 believe that it existed from the proven facts before you.
11 It may be inferred from the proven circumstances, or by acts
12 or conduct, or it may, in your discretion, be inferred when
13 it is the natural and necessary consequence of an act.

14 Now, whether or not you draw such an inference is a
15 matter solely for your determination.

16 Now, a Defendant will not be presumed to have acted
17 with criminal intent. But you may find such intention, or
18 the absence thereof, upon a consideration of words, conduct,
19 demeanor, motive and other circumstances connected with the
20 acts for which the accused is being prosecuted.

21 Now, ladies and gentlemen, evidence is the means by
22 which any fact is put in issue, or is established, or
23 disproved. Now, evidence includes all of the testimony of
24 the witnesses and the exhibits admitted during the trial.
25 It does not include the indictment, the plea of not guilty,

1 the opening statements or the closing arguments of the
2 attorneys.

3 Now, evidence may be either direct or circumstantial or
4 both. Direct evidence is evidence which points immediately
5 to the question at issue. Evidence may also be used to
6 prove a fact by inference and this is referred to as
7 circumstantial evidence. Circumstantial evidence is the
8 proof of facts or circumstances by direct evidence from
9 which you may infer other related or connected facts which
10 are reasonable and justified in light of your experience.

11 Now, to warrant a conviction on circumstance evidence,
12 the proven facts must not only be consistent with the theory
13 of guilt but must exclude every other reasonable theory
14 other than the guilt of the accused.

15 Now, the comparative weight of circumstantial evidence
16 and direct evidence on any given issue is a question of fact
17 for the jury to decide.

18 Now, ladies and gentlemen, testimony has been given by
19 certain witnesses who in law are termed experts. The law
20 permits persons expert in certain areas to give their
21 opinions derived from their knowledge of that area.

22 Now, the weight which is given to the testimony of
23 expert witnesses is a question to be determined by the jury.
24 The testimony of an expert, like that of any other witness,
25 is to be received by you and given only such weight as you

1 think it is properly entitled to receive. You are not
2 required to accept the opinion testimony of any witness,
3 expert or otherwise.

4 Ladies and gentlemen, facts and circumstances which
5 merely place upon a Defendant a grave suspicion of the crime
6 charged, or which merely raise a speculation or conjecture
7 as to the Defendant's guilt are not sufficient to authorize
8 a conviction of the Defendant.

9 The mere association of a person with other persons
10 involved in the commission of a crime, without more, will
11 not authorize a jury to find such person guilty of consent
12 in or concurrence in the commission of the crime unless the
13 evidence shows beyond a reasonable doubt that such person
14 helped in the actual perpetration of the crime or
15 participated in the criminal endeavor.

16 Now, ladies and gentlemen, one who testifies under a
17 grant of immunity from prosecution or a promise of no
18 prosecution by the State or who testifies pursuant to a
19 promise of leniency or as a result of a negotiated plea in
20 which lenience may be inferred is a competent witness. And
21 you may consider whether or not the testimony from such a
22 witness might be slanted in such a way as to further the
23 witness' own interest. You alone shall decide the
24 credibility or believability of the witnesses.

25 Ladies and gentlemen, the Defendant in a criminal case

1 is under no duty to present any evidence tending to prove
2 innocence and is not required to take the stand and testify
3 in the case.

4 If a Defendant elects not to testify, then no inference
5 hurtful, harmful or adverse to the Defendant shall be drawn
6 by the jury nor shall such fact be held against the
7 Defendant in any way.

8 Now, ladies and gentlemen, to impeach a witness means
9 to prove that the witness is unworthy of belief. A witness
10 may be impeached by disproving the facts to which the
11 witness has testified, or by proof that the witness has been
12 convicted of a crime involving moral turpitude.

13 I charge you that the offenses of Burglary, Aggravated
14 Assault, Aggravated Battery, Robbery, and Hindering the
15 Apprehension of a Criminal are crimes involving moral
16 turpitude.

17 And third, a witness may be impeached by proof of
18 contradictory statements previously made by the witness as
19 to matters which are relevant to the witness' testimony and
20 to the case.

21 Now, if any attempt has been made in this case to
22 impeach any witness by proof of contradictory statements
23 previously made by that witness, then you must determine
24 from the evidence, first, whether any such statements were,
25 in fact, made. Second, whether they were contradictory to

1 any statements that the witness made while on the witness
2 stand. And, third, whether it was material to the witness'
3 testimony and to the case.

4 Now, if you find that a witness has been successfully
5 impeached by proof of previous contradictory statements,
6 then you may disregard that testimony unless and until it is
7 corroborated by other creditable testimony. And the credit
8 to be given to the balance of the testimony of that witness
9 will be for you to determine.

10 Now, it is for you to determine whether or not a
11 witness has been impeached and to determine the credibility
12 of such witness and the weight the witness' testimony shall
13 receive in consideration of this case.

14 Now, should you find that any witness, prior to the
15 witness' testimony in this case from the witness stand, has
16 made any statement inconsistent with that witness' testimony
17 from the witness stand, and that such prior inconsistent
18 statement is material to the case and the witness'
19 testimony, then you are authorized to consider that prior
20 statement not only for purposes of impeachment but also as
21 substantive evidence in this case.

22 Ladies and gentlemen, every party to a crime may be
23 charged with and convicted of commission of the crime. A
24 person is a party to a crime only if that person directly
25 commits the crime, or intentionally helps in the commission

1 of the crime, or intentionally advises, encourages, hires,
2 counsels or procures another to commit the crime.

3 Now, any party to a crime who did not directly commit
4 the crime may be indicted, tried, convicted and punished for
5 the crime upon proof that the crime was committed and that
6 the person was a party to it even though the person claimed
7 to have directly committed the crime has not been prosecuted
8 or convicted, or has been convicted of a different crime or
9 degree of crime, or is not amenable to justice, or has been
10 found not guilty.

11 Do you need some water?

12 JUROR: No. I'm just taking a cold, I think.

13 THE COURT: Ladies and gentlemen, identity is a
14 question of fact for determination by the jury. It is
15 dependent upon the credibility of the witness or witnesses
16 offered for this purpose. And you have the right to
17 consider all of the factors charged you in this charge
18 regarding the credibility of witnesses.

19 Now, some, but not all, of the factors you may consider
20 in assessing reliability of identification are: The
21 opportunity of the witness to view the alleged perpetrator
22 at the time of the alleged incident. The witness' degree of
23 attention toward the alleged perpetrator at the time of the
24 alleged incident. The level of certainty shown by the
25 witness about his or her identification. The possibility of

1 mistaken identity. Whether the witness' identification may
2 have been influenced by factors other than the view that the
3 witness claimed to have had. Whether the witness on any
4 prior occasion did not identify the Defendant in this case
5 as the alleged perpetrator.

6 Now, it's for you to say whether under the evidence in
7 this case, the testimony of witnesses, and the facts and
8 circumstances of the case sufficiently identify this
9 Defendant beyond a reasonable doubt as the perpetrator of
10 the alleged crime or that he was a party to it. It is not
11 necessary that the Defendant show that another person
12 committed the alleged offense. It is sufficient if there
13 are facts and circumstances in this case which would raise a
14 reasonable doubt whether this Defendant is, in fact, the
15 person who committed the crime or was a party to it.

16 If you do not believe that the Defendant has been
17 sufficiently identified as the person who committed the
18 alleged crime or crimes, or was a party to it or to them, or
19 if you have any reasonable doubt about such, then it would
20 be your duty to find the Defendant not guilty.

21 The burden of proof rests upon the State to prove
22 beyond a reasonable doubt the identity of this Defendant as
23 the person committed the crime or crimes alleged in this
24 bill of indictment.

25 Now, ladies and gentlemen, all of the charges contained

1 in this bill of indictment are what, under our law, are
2 defined as felonies.

3 Now, the testimony of a single witness, if believed, is
4 generally sufficient to establish a fact. An exception to
5 this rule is made in the case of a felony where the witness
6 is an accomplice.

7 The testimony of the accomplice alone is not sufficient
8 to warrant a conviction. The accomplice's testimony must be
9 supported by other evidence of some type. And that evidence
10 must be such as, independently of the testimony of the
11 accomplice, would lead to the inference of the guilt of the
12 Defendant. It is not required that supporting evidence be
13 sufficient to warrant a conviction, or that the testimony of
14 the accomplice be supported in every material particular,
15 but must be more than to the effect that a crime was
16 actually committed by someone. It must be sufficient to
17 connect the accused with the criminal act, and must be more
18 than sufficient to merely cast upon the Defendant a grave
19 suspicion of guilt. Now, slight evidence from another
20 source connecting the Defendant with the commission of the
21 alleged crime intending to show participation in it may be
22 sufficient supporting evidence of the testimony of an
23 accomplice.

24 In order to convict, that evidence must be sufficient
25 when considered with all other evidence in the case to

1 satisfy the jury beyond a reasonable doubt as to the guilt
2 of the Defendant. The sufficiency of the supporting
3 evidence of the testimony of an accomplice to produce the
4 conviction of the Defendant's guilt is a matter for you to
5 determine.

6 Now, the testimony of one accomplice may be supported
7 by the testimony of another accomplice. Whether or not the
8 testimony of one accomplice does, in fact, support the
9 testimony of another accomplice is a matter for you to
10 decide.

11 Now, whether or not any witness in this case was an
12 accomplice is a question of fact for you to decide.

13 Now, ladies and gentlemen, certain evidence of
14 fingerprint comparison has been admitted for your
15 consideration.

16 Now, identification by fingerprint comparison is
17 opinion evidence and is dependent upon the credibility and
18 accuracy of the expert witness or witnesses called for that
19 purpose as well as the following factors: The validity of
20 the theory of identification by a fingerprint comparison.
21 The credibility of the witness who performs other necessary
22 functions in making the comparison, such as inked finger
23 impressions and latent lifts, and the accuracy of procedures
24 in identifying, preserving, recording and maintaining the
25 integrity of the physical evidence, all of which are

1 questions for the jury to decide.

2 Now, fingerprint evidence is also governed by the rules
3 on circumstantial evidence. If you believe that
4 fingerprints corresponding to those of the Defendant were
5 found and identified, their evidentiary value, if any, would
6 be diminished to the extent that they could have reasonably
7 been left at a time or under circumstances which would be
8 consistent with innocence.

9 A verdict of guilty may not rest upon fingerprint
10 identification alone unless you are satisfied beyond a
11 reasonable doubt that fingerprints left by the accused were,
12 in fact, found and they could only have been impressed by
13 the accused at the time of the commission of the crime and
14 that such identification under all of the facts and
15 circumstances of the case is sufficient to satisfy your mind
16 of the guilt of the accused to the exclusion of any other
17 reasonable hypothesis and beyond a reasonable doubt.

18 Now, ladies and gentlemen, this Defendant is charged in
19 count one with the offense of Aggravated Assault With Intent
20 to Rob.

21 I charge you that an assault is an attempt to commit a
22 violent injury to the person of another with intent to rob.

23 Now, Aggravated Assault is an attempt to commit a
24 violent injury to the person of another with intent to rob.

25 Now, in regards to that I need to give you the

1 definition of Robbery.

2 A person commits Robbery when with intent to commit
3 theft the person takes property of another from the person
4 or immediate presence of another by use of force.

5 Now, force means personal violence or that degree of
6 force necessary to remove articles from the person or from
7 the clothing of the person so as to create resistance,
8 however slight.

9 Now, ladies and gentlemen, this Defendant is charged in
10 count three of this bill of indictment with the offense of
11 Aggravated Battery.

12 I charge you that a person commits the offense of
13 Aggravated Battery when he maliciously causes bodily harm to
14 another by depriving him of a member of his body.

15 Ladies and gentlemen, count five of this bill of
16 indictment charges this Defendant with the offense of Malice
17 Murder.

18 A person commits Murder when that person unlawfully and
19 with malice aforethought, either express or implied, causes
20 the death of another human being.

21 Express malice is that deliberate intention unlawfully
22 to take away the life of another human being which is shown
23 by external circumstances capable of proof. Malice may, but
24 need not, be implied where no considerable provocation
25 appears and where all the circumstances of the killing show

1 an abandoned and malignant heart.

2 It's for the jury to decide whether or not the facts
3 and circumstances of this case show malice.

4 Now, to constitute Murder, the homicide must have been
5 committed with malice. Legal malice is not necessarily ill
6 will or hatred, but it is the unlawful intention to kill
7 without justification, excuse or mitigation.

8 If a killing is done with malice, no matter how short a
9 time the malicious intent may have existed, such killing
10 constitutes Murder.

11 Now, Georgia law does not require premeditation and no
12 particular length of time is required for malice to be
13 generated in the mind of a person. It may be formed in a
14 moment and instantly a mortal wound may be inflicted, yet if
15 malice is in the mind of the accused at the time of the
16 doing of the act or the killing and moves the accused to do
17 it, then such is sufficient to constitute homicide as
18 Murder.

19 Now, proof of particular motive is not essential to
20 constitute the crime of Murder. Evidence of motive, if any,
21 is admitted for your determination as to whether or not it
22 establishes the state of the Defendant's mind at the time of
23 the alleged homicide.

24 Now, ladies and gentlemen, you may infer that a person
25 of sound mind and discretion intends to accomplish the

1 natural and probable consequences of that person's
2 intentional acts. And if a person of sound mind, excuse me,
3 if a person of sound mind and discretion intentionally and
4 without justification uses a deadly weapon or
5 instrumentality in the manner in which the weapon or
6 instrumentality is ordinarily used and thereby causes the
7 death of a human being, you may infer the intent to kill.

8 Whether or not you make any such inference is a matter
9 solely within the discretion of the jury.

10 Ladies and gentlemen, this Defendant is charged in
11 count seven with the offense of Armed Robbery.

12 Under Georgia law a person commits Armed Robbery when
13 with intent to commit theft that person takes property of
14 another from the person or immediate presence of another by
15 use of an offensive weapon. An offensive weapon is any
16 object, device or instrument which when used offensively
17 against a person is likely to or actually does result in
18 death or serious injury.

19 Now, ladies and gentlemen, this Defendant is charged in
20 counts two, four, six and eight with the offenses of
21 Possession of a Firearm During the Commission of a Crime.

22 A person commits the offense of Possession of a Firearm
23 During the Commission of a Crime when the person has on or
24 within arm's reach of his person a firearm during the
25 commission of or any attempt to commit any crime against or

1 involving the person of another.

2 Now, the offenses of Aggravated Assault, Aggravated
3 Battery, Murder and Armed Robbery are felonies under the
4 laws of this state.

5 Now, ladies and gentlemen, you have been trying all
6 eight of these charges at the same time. However, you must
7 return a separate and distinct verdict as to each of these
8 eight charges.

9 A verdict form has been prepared for your use in doing
10 so. The form is here in my hand. We have the style of the
11 case. It's printed here: We, the Jury, find the Defendant,
12 Ray Jefferson Cromartie, as to count, and we list counts one
13 through eight.

14 Now, ladies and gentlemen, if you find and believe
15 beyond a reasonable doubt that the Defendant is guilty of
16 the offense set forth in any one or more of the particular
17 counts of this indictment as, when, where and in the manner
18 set forth in that particular count or counts, then you would
19 be authorized to find the Defendant guilty, and the form of
20 your verdict in that event would be: We, the Jury, find the
21 Defendant as to count blank guilty. And where I have used
22 the word "Blank" you would insert the word "Guilty" next to
23 the count number upon which you find the Defendant guilty
24 beyond a reasonable doubt.

25 Now, on the other hand, if you do not believe the

1 Defendant is guilty, or if you have any reasonable doubt as
2 to his guilt as to the offense charged in any one or more
3 particular counts of this indictment as, when, where and in
4 the manner alleged in that particular count of the
5 indictment you are considering, then it would be your duty
6 to find the Defendant not guilty as to any such count or
7 counts of the indictment. And the form of your verdict in
8 that event would be: We, the Jury, find the Defendant as to
9 count blank not guilty. And where I have used the word
10 "Blank" you would write in the words "Not guilty" next to
11 that particular count number upon which you find the
12 Defendant not guilty.

13 Now, ladies and gentlemen, in this, in these
14 deliberations you are to concern yourselves only with the
15 guilt or innocence of the Defendant as to these specific
16 charges. In these deliberations you are not to concern
17 yourselves with anything regarding any possible punishment.

18 Now, ladies and gentlemen, by ruling or commenting, by
19 no ruling or comment which I have made during this trial
20 have I intended to express any opinion upon the facts of
21 this case, upon the credibility or lack thereof of any
22 witness, upon the evidence or upon the guilt or innocence of
23 the Defendant. Whatever your decision is in this case is
24 yours to decide.

25 Now, ladies and gentlemen, one of your first duties

1 when you retire to the jury room will be to select one of
2 your members to act as foreperson who will preside over your
3 deliberations and who will sign the verdict to which all
4 twelve of you freely and voluntarily agree.

5 Now, Ms. Clark, Mr. Henry, Ms. Sims, Mr. Piland, at
6 this time, in a moment when the jury retires to begin their
7 deliberations, you will be separated from these twelve.
8 Now, during that time the additional instructions -- the
9 instructions still apply to you. You don't need to talk
10 with anyone about the case or deliberate on the case among
11 your own group. Now, if at such time that it becomes
12 necessary for the Court to excuse one of these twelve
13 jurors, then you would be asked to take that juror's place
14 in the order that you were selected as alternates.

15 Now, ladies and gentlemen, at this time you may retire
16 to your jury room to select one of your members as
17 foreperson. Now, please do not begin your deliberations
18 until we gather all of the evidence together and the
19 indictment and the verdict form and those are sent into the
20 jury room for your consideration during your deliberations.
21 As soon as you have received those, then you may begin your
22 deliberations in this case.

23 (At approximately 9:50 A. M. the jury retires to the
24 jury room, after which the following transpired)

25 THE COURT: Ms. Peters, Mr. Stratford, we need to find

1 a separate room for the alternates to be in. Do we have a
2 witness room or some other room that they can be segregated
3 in?

4 Gentlemen, are there any objections or exceptions to
5 the charge?

6 MR. HARDY: Not from the State, Your Honor.

7 MR. MEARS: Your Honor, I believe we'd respectfully
8 reserve all objections and exceptions to the charges until
9 such time as a Motion for a New Trial is filed, if
10 necessary, or there is an appellate, a notice of appeal or
11 an appellate brief filed in this particular case. We would
12 reserve all objections and all exceptions.

13 THE COURT: All right, sir. You do have that right.

14 Mr. Mears, at this time, with the exception of what we
15 did cover during the charge conference yesterday, are you
16 aware of any particular charge that the Court would need to
17 give, or any particular charge that the Court did give that
18 it should not give, or any slip of the tongue that needs to
19 be corrected or anything of that nature?

20 MR. MEARS: Your Honor, I do not have any objections or
21 exceptions to any manner in which the Court gave these
22 particular charges. I did not note any slip of the tongue
23 or any inadvertent deviation from the charges that you said
24 you were going to give. Other than that, I have nothing
25 further to add other than my continuing reservation of my

1 right, of Mr. Cromartie's right to except or object at the
2 time of a Motion for a New Trial or notice of appeal.

3 THE COURT: Yes, sir. You have that right.

4 MR. MEARS: Thank you.

5 THE COURT: All right, gentlemen, if you could -- I
6 believe you have previously approved the verdict form. You
7 have previously approved the editing, so to speak, of the
8 indictment. I have both of those here. These need to go
9 out with the jury.

10 My request at this time is that you make sure that all
11 the proper exhibits are together that the bailiffs are
12 taking out to the jury. That you also bring to the Court's
13 attention any specific exhibit that you feel like should not
14 go out to the jury so that we can address that.

15 MR. MEARS: Judge, if I could address that specifically
16 now with regard to the enhanced and enlarged photographs
17 from the videotape. They have been designated, I believe,
18 as, collectively as State's Exhibit 152 and State's Exhibit
19 151.

20 THE COURT: Gentlemen, while you're doing that, I, I
21 recall at this time one specific very brief instruction that
22 I, I don't believe I gave the jury. And I don't believe I
23 have forgotten in the past to give it to a jury, and that is
24 that whatever their verdict is has to be a unanimous
25 verdict. I don't recall telling them that.

1 If you would ask them to come back in, please.

2 MR. HARDY: I thought they understood that.

3 MR. MEARS: I want to thank you for remembering it,
4 Judge.

5 (Whereupon the jury returns to the courtroom,
6 after which the following transpired)

7 THE COURT: Ladies and gentlemen, I apologize for
8 ushering you out and back in like this. I inadvertently
9 forgot to give you one very, very important charge which
10 I've never forgotten to give a jury before. But I just flat
11 forgot it in this particular instance and I apologize for
12 that.

13 Whatever your verdict is, it must be a unanimous
14 verdict. That is, it must be agreed upon by all twelve of
15 your members and dated by your foreperson, signed by your
16 foreperson, returned and published in open court.

17 Thank you.

18 (Whereupon the jury retires from the courtroom,
19 after which the following transpired)

20 THE COURT: Gentlemen, I believe Mr. Hutchings has gone
21 to get some boxes to help transfer these exhibits to the
22 jury room.

23 MR. MEARS: Judge, I would just renew my reservation of
24 objections and exceptions.

25 THE COURT: Yes, sir.

1 MR. MEARS: Judge, while we're waiting on Mr. Hutchings
2 to get that, can I briefly clarify my objections with regard
3 to State's Exhibit 149, 151 and 152. The Court will recall
4 these were identified as being photographs made from, at
5 various times from the freeze frame portions of the
6 videotape which is State's Exhibit Number 32. The Court
7 will recall, 31, I believe, was the slow motion portion of
8 the videotape. 32 is the complete tape. State's Exhibit
9 149, I believe the testimony was, was a type of mavigraph,
10 was made from a mavigraph processing of the crime scene at
11 the Madison Street Deli. 51 and -- 151 and 152 are the same
12 photographs of 149 with varied lighting. As the Court can
13 see, these -- they've altered the lighting in 152 from 151.
14 And they are basically, all three exhibits are the same
15 frames from the videotape.

16 My objection is and was and it still is that, one, the
17 three exhibits are duplicative. There are three different
18 images of the same frames. Therefore, the jurors are seeing
19 three different exhibits of the very same photograph which I
20 think falls, clearly falls within the prohibition against
21 duplicating evidence because it unduly accentuates and
22 focuses the juror's attention on items of evidence rather
23 than having the jurors concentrate on the quality and
24 credibility of the evidence. Here you have -- by sheer
25 numbers the jurors are going to think, I would submit, that

1 this evidence is more important than any other evidence.
2 That's for them to determine. And I would object on that
3 basis.

4 The introduction of all of these collectively or
5 individually constitutes a continuing witness from the
6 videotape. The Court, I believe, has acknowledged that the
7 videotape itself does not go out. The jurors cannot see and
8 resee and view and review the videotape itself. This is --
9 These photographs are simply nothing more than a
10 continuation of the videotape in freeze frames. This is not
11 an enlargement for the purpose of showing a particular item
12 or a particular part of the surveil -- of the video. This
13 is the video itself in freeze frame portions. We would
14 object on that basis.

15 The enlarged frames and the light altered frames are
16 gross alterations of the frames of the videotape and are
17 therefore manufactured evidence, not original evidence as
18 required by law.

19 At least 151 and 152 are also gross alterations of the
20 frames in that there's been a manipulation of the light in
21 order to unduly and unfairly focus the juror's attention on
22 particular parts rather than the photograph as a whole.

23 The use of freeze frame photographs such as these is a
24 subterfuge and circumvents the prohibition against the
25 videotape itself going out. It's not as if -- in those

1 cases where the courts have in some instances allowed an
2 enlargement of a single frame of a surveillance tape to go
3 out, this, these frames that have been reproduced here,
4 these photographs, is, in fact, the twenty-two second
5 portion of the videotape that the State is prohibited from
6 sending out to the jury. Therefore, the introduction of
7 149, 152 and 151 is an attempt to circumvent the rules of
8 evidence with regard to that particular matter.

9 And I know that Your Honor had already ruled. I simply
10 wanted to make sure that I had articulated those objections
11 in the proper form.

12 THE COURT: All right. Thank you, sir.

13 Any response by the State?

14 MR. HARDY: Leave it with the Court, Your Honor, on
15 that issue, whatever the Court wants to do.

16 THE COURT: Gentlemen, at this time I'll readopt my
17 former ruling.

18 All right. Gentlemen, at this time let me address
19 whether or not there are any issues as to arguments of
20 Counsel or as to the charge of the Court?

21 MR. HARDY: No, sir.

22 THE COURT: What I'm doing is going over the section of
23 the Unified Appeal Procedure that we need to go through at
24 this time.

25 MR. MEARS: Judge, the only issue with regard to

1 argument of Counsel, I think I made one objection during
2 yesterday's argument. Mr. Mitchell, I believe, had
3 inadvertently interjected, and I'm sure it was inadvertent,
4 simply that, "I believe we've got that". I think that was
5 an improper assessment of opinion. I objected. I believe
6 the Court gave curative instructions. I have no exceptions
7 to those.

8 THE COURT: I sustained the objection and Mr. Mitchell
9 apologized.

10 MR. MEARS: Mr. Mitchell -- I won't characterize what
11 Mr. Mitchell acknowledged. But that would have not been
12 proper and he acknowledged that in front of the jury. I
13 have no exceptions to anything the Court did with regard to
14 that objection.

15 THE COURT: All right, sir.

16 MR. MEARS: I think it was handled properly by Mr.
17 Mitchell and I appreciated him making that statement.

18 MR. HARDY: 174 is the letter and a copy of the letter.

19 MR. MEARS: I withdrew 16 because I think it'd be
20 confusing to them too.

21 MR. HARDY: This goes out or doesn't go out, 174?

22 MR. MEARS: 174 goes out. I've withdrawn Defendant's
23 Exhibit 16 because it's duplicative of that.

24 THE COURT: Gentlemen, are there any other motions or
25 objections for the Court to consider at this time on behalf

1 of the Defense?

2 MR. MEARS: I don't have anything, Your Honor.

3 THE COURT: Mr. Cromartie, --

4 MR. HARDY: Mr. Kleinrock, Your Honor, on the
5 fingerprint card, there was the date, 1990, was still on the
6 copy, and he's trying to white it out and make another copy.

7 THE COURT: Mr. Cromartie, I need to address at this
8 time again, sir, whether or not you have any objections to
9 Mr. Mears or Mr. Bryant as your Counsel in this particular
10 matter?

11 MR. CROMARTIE: No, sir.

12 THE COURT: Or any objections as to the manner in which
13 they are handling your defense?

14 MR. CROMARTIE: No, sir.

15 THE COURT: All right. Thank you, sir.

16 MR. MEARS: Your Honor, I don't believe we've made a
17 determination as to -- we have a map, I believe, that was
18 used by a couple of the witnesses. It's an enlargement. I
19 don't think there was any objection to the use of the map of
20 Thomasville. I would ask that that go out with the jury.
21 Unlike the other diagram of the crime scene done by Mr.
22 Collins, they've got the smaller versions, and I'm not sure
23 it's necessary that the, the enlargement of Mr. Collins'
24 drawing to go out. I would like for the map --

25 THE COURT: That's fine if the State has no objection.

1 MR. HARDY: Not to the map, Your Honor.

2 THE COURT: That's fine.

3 MR. MEARS: It's Defendant's Exhibit 7, Judge.

4 THE COURT: Gentlemen, while ya'll are doing that, I'm
5 going to look at one matter. I'll be right back.

6 (Whereupon there is a brief delay, after which
7 the following transpired)

8 THE COURT: Gentlemen, have ya'll had an opportunity to
9 review the exhibits to go out? Are each of you satisfied
10 with the exceptions, any objections made in regards to the
11 enhancements or photographs taken from the video? Are there
12 any objections to any matters that are being taken out with
13 the jury?

14 MR. HARDY: I think the Clerk has those that had been
15 objected to.

16 MR. MEARS: I think so. I think that everything,
17 subject to all our objections, everything that's been
18 allowed to go out has now gone out.

19 THE COURT: We'll be in recess while the jury is
20 deliberating.

21 MR. MEARS: Your Honor, could I ask for, perhaps it
22 might be appropriate, if Mr. Cromartie could stay in the
23 courtroom with us rather than back next to the jury room?

24 THE COURT: Mr. Mears, I'm going to leave that to the
25 discretion of the Sheriff's office.

1 MR. MEARS: We're going to sit here, I just wondered if
2 he could sit with us rather than sit back there while we --

3 THE COURT: Well, again, I'm going to leave that to the
4 discretion of the Sheriff's office since they're responsible
5 for security and also responsible for keeping him.

6 MR. MEARS: I understand.

7 THE COURT: So I'll leave that to their discretion,
8 whether or not they have enough personnel, et cetera to do
9 that.

10 (Whereupon the Court is recessed to await the verdict
11 of the jury.

12 At approximately 11:40 A. M. the jury returns to the
13 courtroom, after which the following transpired)

14 THE COURT: All right. Ladies and gentlemen, we have a
15 written question from the jury. "May we view the video
16 concerning the Madison Street Deli incident, only portion
17 relating in the actual shooting that we were shown as
18 evidence? Thanks."

19 Any response from the State?

20 MR. HARDY: I don't care if they see it.

21 THE COURT: From the Defense?

22 MR. MEARS: Your Honor, I think they're probably
23 entitled to see it. I would object to showing the videotape
24 again on the basis that it unduly accentuates that
25 particular piece of evidence as opposed to others. Subject

1 to that objection, I acknowledge that they probably have a
2 right if they request to see it.

3 THE COURT: All right, sir.

4 MR. MEARS: Could I ask -- Are you going to bring them
5 back in and show it to them in here, Judge?

6 THE COURT: Yes, sir.

7 MR. MEARS: Okay.

8 THE COURT: Yes, sir.

9 All right, ladies and gentlemen, I, I'm going to
10 overrule the objection and allow the jury to watch that
11 portion of the video.

12 Gentlemen, we need to, if we can, go ahead and move it
13 around. And I think a better location is where we had it
14 set up later in the day, so that all the jury can see it
15 from that one spot.

16 MR. MEARS: As I understood it, this is only the small
17 twenty-two second portion?

18 THE COURT: That's correct.

19 Gentlemen, let me inquire of one question. It's a good
20 question that's been raised by the bailiff. That is whether
21 or not the alternates should come in and view this also.
22 Now, I understand that if, and recognize that if we need to
23 replace one of the original twelve jurors with an alternate,
24 that the Court instructs the jury to begin their
25 deliberations over again. In the event that were to occur,

1 it appears to me that the alternate that takes the place of
2 one of the twelve is not going to have had the opportunity
3 of viewing this with the other eleven that had seen it
4 again, and we would need to show it to the alternate at that
5 time and ask them to resume their deliberations.

6 With that in mind, I think I would have the original
7 twelve and the alternates view this at this time. Is there
8 any --

9 MR. MEARS: I, I think that would be appropriate, Your
10 Honor. We certainly don't have any objection to them being
11 brought in.

12 THE COURT: All right.

13 MR. MEARS: Is the Court going to, is the Court going
14 to give any instructions to the jurors, recharge them with
15 regard to any particular matter such as identification or
16 anything like that before or after they've seen the
17 videotape?

18 THE COURT: I have not intended to; no, sir.

19 MR. MEARS: Just as a matter of record, I want to make
20 sure that I renew my request for charge on similar
21 transaction as it relates to the Madison Street Deli, Judge.

22 THE COURT: All right, sir.

23 Gentlemen, if we could go ahead and get this -- Is
24 it -- Let's go ahead and get the tape at the appropriate
25 point before we bring the jury in.

1 (Whereupon there is a brief delay)

2 MR. MEARS: If I recall correctly, Your Honor, there
3 was a sound that appeared in the washing of the dishes.
4 There was a sound, I believe, just after that is when the
5 person came on and when he leaves is when it should be cut
6 off.

7 THE COURT: Yes, sir.

8 MR. MEARS: That's my understanding.

9 THE COURT: Gentlemen, do you recall if you put -- if
10 you pause this particular video does it distort the picture?

11 MR. MEARS: Yes, sir. It, it gives it a --

12 THE COURT: Fuzzy.

13 MR. MEARS: -- we tried that when we were doing the
14 individual watching.

15 THE COURT: Well, I was just wondering in anticipation
16 if the jury did ask for it to be paused at some point in
17 time, what, what directions we would give that. And, in
18 fact, if it distorts the picture, then that's certainly not
19 going to be of any benefit.

20 MR. MEARS: I would ask that it not be paused, Your
21 Honor. That it simply be played as it was during the trial
22 straight through, and I don't think there was any pauses
23 then. I think -- I would ask the Court not to pause it.

24 THE COURT: Mr. Hardy, Mr. Mitchell, is that your
25 recollection of what it does when you pause it?

1 MR. HARDY: I think there's just some lines across it.
2 It doesn't distort the picture.

3 THE COURT: All right.

4 MR. MEARS: Well, I, I think it does. I don't want to
5 argue about it. But when you stop it, it's, it's got some
6 distortion to it. We could see it and see, Your Honor. But
7 I -- It wasn't stopped during the presentation at trial and
8 I would ask that it not be stopped now.

9 THE COURT: All right.

10 All right, gentlemen, are you ready to bring the jury
11 in?

12 Let's bring the jury in.

13 MR. HARDY: Your Honor, is Mr. Mitchell going to start
14 it and stop it? How are we going to do this?

15 MR. MEARS: That's fine with us.

16 THE COURT: Mr. Mitchell, if you would.

17 MR. MITCHELL: Maybe put him a chair up here and let
18 him sit down.

19 MR. MITCHELL: It might be better if we let Mr. Mears
20 start it and stop it, Judge, in case --

21 MR. HARDY: Let the Judge -- Somebody -- Maybe the
22 Clerk there or somebody.

23 THE COURT: Gentlemen, ya'll have been working this
24 particular TV throughout the trial. Ya'll are familiar with
25 it --

1 MR. HARDY: We'll get Mark a chair and let him --

2 MR. MEARS: If Mr. Mitchell and I could stand behind
3 the alternates --

4 THE COURT: That's fine.

5 MR. MEARS: -- I think between the two of us we might
6 be --

7 THE COURT: Mr. Hutchings, put this note in the file,
8 please, sir.

9 CLERK: All right.

10 BAILIFF: Are you ready now for the jury?

11 THE COURT: Yes, ma'am.

12 (Whereupon the jury returns to the courtroom,
13 after which the following transpired)

14 THE COURT: Ladies and gentlemen, we've received a note
15 requesting that the portion of the video dealing with the
16 Madison Street incident be reviewed by the jury at this
17 time. Is that correct?

18 Ladies and gentlemen, have you selected a foreperson?
19 Ms. Blaha?

20 MS. BLAHA: Yes, sir.

21 THE COURT: Okay. All right.

22 (Whereupon a portion of State's Exhibit 32 is played
23 for the jury, after which the following transpired)

24 THE COURT: Ladies and gentlemen, you may now retire to
25 your jury room.

1 (Whereupon the jury retires to the jury room,
2 after which the following transpired)

3 THE COURT: We'll be in recess while the jury continues
4 to deliberate.

5 Gentlemen, do you have any objection -- Mr. Bailiff,
6 simply inform the jury when they, if and when they get ready
7 to break for lunch, just let us know.

8 MR. MEARS: That's fine with us, Judge.

9 THE COURT: I'll bring them back in and recation them
10 and then I'll send them to lunch.

11 MR. MEARS: Are they going to be sequestered during the
12 lunch recess insofar as going to lunch together and coming
13 back? Are you going to allow them to disperse and go to
14 lunch?

15 THE COURT: I had not anticipated sequestering them. I
16 think --

17 MR. MEARS: I'm not requesting it.

18 THE COURT: Yes, sir. With appropriate instructions we
19 can allow them to disperse.

20 (Whereupon the Court is recessed in the case to
21 await the verdict of the jury.

22 At approximately 12:00 P. M. the jury returns to the
23 courtroom, after which the following transpired)

24 THE COURT: Gentlemen, we have another request from the
25 jury. The request is, "May we please see the slowed down

1 version of the video?"

2 MR. MEARS: Your Honor, we're going to object to the
3 slowed down version. I think that while the, another
4 foundation would have to be laid. The Court would certainly
5 have to give instructions as to the, how they handled the
6 slowed down version of the tape. I would strenuously object
7 to showing anything other than the tape in the form in which
8 it was recorded. It's already been altered. And I would
9 object to them being shown the slowed down version.

10 THE COURT: All right. Any response?

11 MR. HARDY: We'll submit it.

12 THE COURT: Gentlemen, from my recollection of the
13 evidence, they have seen State's Exhibit Number 32, the
14 original version of the tape. They were also, I believe
15 while Mr. King, Mr. King, while he was on the stand, they
16 viewed the slowed down version. Is that correct?

17 MR. MITCHELL: Yes, sir.

18 THE COURT: Gentlemen, I believe that I will allow them
19 to view that once more.

20 Mr. Mears, do you have any specific instructions that
21 you would wish to request be given to the jury in regards to
22 their reviewing that slowed down version?

23 MR. MEARS: Judge, I believe -- isn't there a standard
24 charge with regard to the jurors are to consider all of the
25 evidence and not -- and I may be sort of searching here.

1 But there's something that comes to my mind that there's a
2 standard charge that the Court gives the jurors about, it
3 goes into the not singling out and excluding bits of pieces,
4 to cover it in its totality, something of that nature in the
5 standard charge.

6 THE COURT: Not that I recall off the top of my head,
7 Mr. Mears. You know, I -- there -- they certainly should
8 consider all of the evidence, and I'll be happy to charge
9 them that they need to consider all of the evidence in
10 reaching a verdict in this case.

11 MR. MEARS: At, at least that, I would ask. There may
12 not be, and it may just be Defense attorney's wishful
13 thinking that there should be such a charge. But if the
14 Court could give what you've proposed, I would appreciate it
15 very much, at the beginning of playing the slowed down
16 version.

17 THE COURT: All right, sir.

18 All right, gentlemen, let's get the equipment set up
19 again.

20 (Whereupon there is a brief delay)

21 MR. MEARS: Your Honor, Mr. Bryant has made a very
22 excellent point. I don't want to, by requesting this
23 additional charge, I don't want to be considered as having
24 waived my previous objections and reservation of objections
25 and exceptions to the other charges the Court has given.

1 THE COURT: All right, sir.

2 MR. MEARS: If the Court is going to consider my
3 request as a waiver of the reservation of charges, then I'll
4 withdraw the charge.

5 THE COURT: All right, sir.

6 MR. MEARS: And is the Court ruling one way or the
7 other?

8 THE COURT: Mr. Mears, if it would, in fact, be a
9 waiver, I would consider it as a waiver.

10 MR. MEARS: Excuse me?

11 THE COURT: If it would, in fact, be a waiver, I would
12 consider it as a waiver.

13 MR. MEARS: Okay. Then in that -- absent direction
14 from the Court I, I --

15 THE COURT: I don't know that it is, in fact, a waiver.
16 Insofar as waiving the objection as a whole, I don't think
17 that is the case. But I'm not going to say, you know, you
18 can --

19 MR. MEARS: Out of an abundance of caution, Your Honor,
20 I'm withdrawing that particular request. It's not in
21 writing at this time. I will withdraw it and reassert my
22 reservation of all objections and exceptions to the Court's
23 charge until such time as a Motion for New Trial or notice
24 of appeal has been filed in this case.

25 THE COURT: All right, sir.

1 MR. HARDY: Mr. Mitchell -- the slow down had started
2 off with the twenty-two seconds and then it goes to the slow
3 down. Does the Court wants us to do both, or one or the
4 other?

5 MR. MEARS: I would like to go straight to the slow
6 down. I don't --

7 THE COURT: Yes, sir.

8 (Whereupon there is a brief delay)

9 THE COURT: All right, gentlemen, are you satisfied
10 that you have it at the appropriate place, have the tape at
11 the appropriate place?

12 MR. MEARS: We can just do it the same way we did it
13 before.

14 MR. BRYANT: One of the jurors was complaining about
15 the overhead lights earlier.

16 THE COURT: Let's leave them, let's leave them on until
17 they get in the box and then you can cut them off.

18 You may bring the jury in.

19 (At approximately 12:00 P. M the jury returns to the
20 courtroom, after which the following transpired)

21 THE COURT: All right. Ladies and gentlemen, we have a
22 request to see the slowed down version of the video. And
23 we'll play that for you at this time.

24 Before we start it, let me remind you that you do need
25 to consider all of the evidence presented during the trial

1 in your deliberations and in reaching a verdict in your
2 case.

3 All right. We're ready to start.

4 (Whereupon a portion of State's Exhibit 32 is
5 played for the jury)

6 THE COURT: All right. Ladies and gentlemen, what I do
7 with the notes that you send me, I initial them and put them
8 in the Clerk's file so that there is a permanent record.
9 And I think this last note was written in pencil. If ya'll
10 could write them in ink for the record, I would appreciate
11 it.

12 At this time we will ask that you step back to your
13 jury room to resume your deliberations. Let me -- I think
14 you've already been sent the message, but let me just
15 reaffirm it. When ya'll get ready to break for lunch, let
16 us know and we'll simply bring you back in and reaffirm the
17 cautionary instructions that we have given you and take a
18 lunch recess.

19 Thank you.

20 Mr. Hutchings.

21 (Whereupon the jury retires from the courtroom,
22 after which the following transpired)

23 THE COURT: We'll be in recess while the jury is
24 deliberating.

25 (Whereupon the Court is recessed in the case to

1 await the verdict of the jury.

2 At approximately 12:25 P. M. the jury returns to
3 the courtroom, after which the following transpired)

4 THE COURT: Ladies and gentlemen, you've requested a
5 lunch recess. Would an hour be long enough? Would you
6 prefer to come back at 1:20 or 1:30? 1:30.

7 Let me simply ask that you please recall -- I think by
8 this time you will recall the cautionary instructions that
9 I've already given you, and please abide by those.

10 And in addition, there may have been some articles in
11 the paper in regards to the fact that this case has gone to
12 the jury at this time. There may be persons over lunch or
13 things of that nature discussing it, giving opinions,
14 rendering opinions based upon what they've read or heard as
15 opposed to what's actually been presented in the courtroom.
16 So just be extra cautious not to let anyone talk about this
17 case in your presence or within your hearing.

18 In addition, when you come back from lunch and return
19 to the jury room, the bailiff will let me know when all
20 twelve of you are back and present in the jury room. And at
21 that time I will send instructions for you to resume your
22 deliberations. You don't need to deliberate, talk about the
23 case unless all twelve of you are present. This includes
24 restroom breaks, lunch breaks and otherwise. You all twelve
25 need to be present and be a part of the discussions and the

1 deliberations.

2 Anything further requested by the State?

3 MR. HARDY: No, sir.

4 THE COURT: Or the Defense?

5 MR. MEARS: Nothing further.

6 THE COURT: Thank you, ladies and gentlemen.

7 Yes, ma'am?

8 MS. BLAHA: Do we wear the sticker out or take it
9 off --

10 THE COURT: Well, it may be helpful -- that could work
11 both ways. It may helpful if someone sees you wearing the
12 sticker, depending on that person, that they would take
13 precautions not to talk about the case in your presence. On
14 the other hand, there may be those that would do just the
15 opposite and see it as fate, so to speak. I think I would
16 prefer for you to remove the stickers and use your own
17 judgment insofar as making sure that no one discusses this
18 matter in your presence or in your hearing.

19 Thank ya'll.

20 (Whereupon the jury retires from the courtroom,
21 after which the following transpired)

22 THE COURT: We'll be in recess until 1:30.

23 (Whereupon the Court is recessed for lunch after which
24 the Jury resumes deliberations.

25 At approximately 2:30 P. M. Court is resumed with the

1 following transpiring outside of the jury's presence)

2 THE COURT: Now, ladies and gentlemen, it's the Court's
3 understanding that the jury has reached a verdict in this
4 case.

5 Let me first caution anyone that if you feel like,
6 regardless of what the verdict is, if you feel like that you
7 may have some difficulty in maintaining your emotions,
8 composure, demeanor, then I suggest that you excuse yourself
9 from the courtroom at this time. Any outbursts, things of
10 that nature will not be tolerated.

11 You may bring the jury in.

12 BAILIFF: And the alternates?

13 THE COURT: Yes, ma'am.

14 (Whereupon the jury returns to the courtroom,
15 after which the following transpired)

16 THE COURT: Madam Foreperson, has the jury reached a
17 unanimous verdict on all eight counts?

18 MS. BLAHA: Yes, sir; we have.

19 THE COURT: If you would hand the verdict form to the
20 bailiff, please, ma'am?

21 Ladies and gentlemen, the verdict of the Jury is: We,
22 the Jury, find the Defendant, Ray Jefferson Cromartie guilty
23 as to all counts. This 26th day of September, 1997.

24 Patricia S. Blaha, Foreperson.

25 All right, ladies and gentlemen, at this time I am

1 going to conduct what is referred to as a poll of the jury.

2 In doing so what I will ask -- I'll call on each of you
3 individually. I will ask, "Was this your verdict in the
4 jury room? Was it reached by you freely and voluntarily?
5 Is it still your verdict? And was it based solely on the
6 evidence presented here in court and the instructions on the
7 law given you by the Court"?

8 Ms. Rhonda Smith. Ms. Smith, was this your verdict in
9 the jury room?

10 MS. SMITH: Yes, sir.

11 THE COURT: Was it reached by you freely and
12 voluntarily?

13 MS. SMITH: Yes, sir.

14 THE COURT: Is it still your verdict?

15 MS. SMITH: Yes, sir.

16 THE COURT: Was it based solely on the evidence
17 presented here in the courtroom?

18 MS. SMITH: Yes, sir.

19 THE COURT: Ms. Marsha Conradi.

20 MS. CONRADI: Yes, sir.

21 THE COURT: Ms. Conradi, was this your verdict in the
22 jury room?

23 MS. CONRADI: Yes; it was.

24 THE COURT: Was it reached by you freely and
25 voluntarily?

1 MS. CONRADI: Yes; it was.

2 THE COURT: Is it still your verdict?

3 MS. CONRADI: Yes, sir.

4 THE COURT: And was it based solely on the evidence
5 presented here in this courtroom?

6 MS. CONRADI: Yes, sir.

7 THE COURT: Ms. Theresa Fletcher. Ms. Fletcher, was
8 this your verdict in the jury room?

9 MS. FLETCHER: Yes, sir.

10 THE COURT: Was it reached by you freely and
11 voluntarily?

12 MS. FLETCHER: Yes, sir.

13 THE COURT: Is it still your verdict?

14 MS. FLETCHER: Yes, sir.

15 THE COURT: And was it based solely on the evidence
16 presented in this courtroom?

17 MS. FLETCHER: Yes, sir.

18 THE COURT: Corine Monroe.

19 MS. MONROE: Yes, sir.

20 THE COURT: Ms. Monroe, was this your verdict in the
21 jury room?

22 MR. MONROE: Yes, sir.

23 THE COURT: Was it reached by you freely and
24 voluntarily?

25 MS. MONROE: Yes, sir.

1 THE COURT: Is it still your verdict?

2 MS. MONROE: Yes, sir.

3 THE COURT: And was it based solely on the evidence
4 presented here in this courtroom?

5 MS. MONROE: Yes, sir.

6 THE COURT: Ms. Darla Glass.

7 MS. GLASS: Yes, sir.

8 THE COURT: Ms. Glass, was this your verdict in the
9 jury room?

10 MS. GLASS: Yes, sir.

11 THE COURT: Was it reached by you freely and
12 voluntarily?

13 MS. GLASS: Yes, sir.

14 THE COURT: Is it still your verdict?

15 MS. GLASS: Yes, sir.

16 THE COURT: And is it based solely on the evidence
17 presented here in this courtroom?

18 MS. GLASS: Yes, sir.

19 THE COURT: Ms. Jewell McMickle.

20 MS. MCMICKLE: Here.

21 THE COURT: Ms. McMickle, was this your verdict in the
22 jury room?

23 MS. MCMICKLE: Yes, sir.

24 THE COURT: Was it reached by you freely and
25 voluntarily?

1 MS. MCMICKLE: Yes.

2 THE COURT: Is it still your verdict?

3 MS. MCMICKLE: Yes.

4 THE COURT: And was it based solely on the evidence
5 presented here in this courtroom?

6 MS. MCMICKLE: Yes.

7 THE COURT: Ms. Patricia Blaha. Ms. Blaha, was this
8 your verdict in the jury room?

9 MS. BLAHA: Yes, sir.

10 THE COURT: Was it reached by you freely and
11 voluntarily?

12 MS. BLAHA: Yes, sir.

13 THE COURT: Is it still your verdict?

14 MS. BLAHA: Yes, sir.

15 THE COURT: Was it based solely on the evidence
16 presented here in this courtroom?

17 MS. BLAHA: Yes, sir.

18 THE COURT: Ms. Charlotte Parker.

19 MS. PARKER: Yes, sir.

20 THE COURT: Ms. Parker, was this your verdict in the
21 jury room?

22 MS. PARKER: Yes, sir.

23 THE COURT: Was it reached by you freely and
24 voluntarily?

25 MS. PARKER: Yes, sir.

1 THE COURT: Is it still your verdict?

2 MS. PARKER: Yes.

3 THE COURT: And was it based solely on the evidence
4 presented here in this courtroom?

5 MS. PARKER: Yes, sir.

6 THE COURT: Ms. Amy Alderson.

7 MS. ALDERSON: Yes.

8 THE COURT: Ms. Alderson, was this your verdict in the
9 jury room?

10 MS. ALDERSON: Yes, sir.

11 THE COURT: Was it reached by you freely and
12 voluntarily?

13 MS. ALDERSON: Yes, sir.

14 THE COURT: Is it still your verdict?

15 MS. ALDERSON: Yes, sir.

16 THE COURT: Was it based solely on the evidence
17 presented here in this courtroom?

18 MS. ALDERSON: Yes, sir.

19 THE COURT: Ms. Natasha Hill. Ms. Hill, was this your
20 verdict in the jury room?

21 MS. HILL: Yes, sir.

22 THE COURT: Was it reached by you freely and
23 voluntarily?

24 MS. HILL: Yes, sir.

25 THE COURT: Is it still your verdict?

1 MS. HILL: Yes, sir.

2 THE COURT: Was it based solely on the evidence
3 presented here in this courtroom?

4 MS. HILL: Yes, sir.

5 THE COURT: Ms. Gladys Leaks.

6 MR. LEAKS: Yes.

7 THE COURT: Ms. Leaks, was this your verdict in the
8 jury room?

9 MS. LEAKS: Yes, sir.

10 THE COURT: Was it reached by you freely and
11 voluntarily?

12 MS. LEAKS: Yes, sir.

13 THE COURT: Is it still your verdict?

14 MS. LEAKS: Yes, sir.

15 THE COURT: And was it based solely on the evidence
16 presented here in this courtroom?

17 MS. LEAKS: Yes, sir.

18 THE COURT: Ms. Annette Connelly. Ms. Connelly, was
19 this your verdict in the jury room?

20 MS. CONNELLY: Yes, sir.

21 THE COURT: Was it reached by you freely and
22 voluntarily?

23 MS. CONNELLY: Yes, sir.

24 THE COURT: Is it still your verdict?

25 MS. CONNELLY: Yes, sir.

1 THE COURT: Was it based solely on the evidence
2 presented here in this courtroom?

3 MS. CONNELLY: Yes, sir.

4 THE COURT: Gentlemen, does either party wish to
5 examine the form of the verdict at this time?

6 MR. MEARS: I do, Your Honor.

7 THE COURT: All right, sir.

8 MR. MEARS: We have no objection to the form of the
9 verdict, Your Honor.

10 THE COURT: All right. Thank you, sir.

11 Ladies and gentlemen, at this time I have a matter that
12 I need to take up with Counsel prior to proceeding into the
13 second stage of this trial.

14 So at this time I'm going to ask that you step to your
15 jury room. Let me ask, while you are in your jury room if
16 you would discuss this for me. That is, as I see it we
17 basically have three options insofar as proceeding. If you
18 would like to proceed this afternoon with the sentencing
19 phase, the second part of this trial, then we will proceed
20 this afternoon, shortly. In addition to that, if you wish
21 to come back tomorrow and work on, on this case. As I told
22 you before, we anticipate that the evidence would take
23 approximately one day in the sentencing phase. If you wish
24 to come back tomorrow and work on that, let me know. Or if
25 you wish to come back -- to recess for the day and come back

1 Monday. We can either work the rest of this day and come
2 back tomorrow, or we can work the rest of this day and come
3 back Monday, or we can recess and come back Monday.

4 If ya'll would discuss that among yourselves and if you
5 can reach some consensus, we will do our best to follow that
6 consensus. If any of you have any, any very unusual and
7 important matters scheduled for tomorrow, let the rest of
8 the jurors know that so that can be considered in, in your
9 request to the Court insofar as how you would like to
10 proceed in this matter.

11 You may retire to your jury room at this time.

12 (Whereupon the jury retires from the courtroom,
13 after which the following transpired)

14 THE COURT: All right. Gentlemen, at this time are
15 there, prior to proceeding with the sentencing phase of this
16 case, are there any motions that need to be addressed to the
17 Court?

18 MR. MITCHELL: Nothing from the State, Your Honor.

19 THE COURT: Mr. Mears?

20 MR. MEARS: Your Honor, we have no motions to present
21 at this time. However, we would formally ask for a
22 continuance until at least tomorrow morning in order to
23 adequately prepare for the presentation of witnesses for the
24 sentencing phase of this trial. We need time to, first of
25 all, talk to our client with regard to this matter. He's

1 just now been convicted of six felonies, one of which may
2 subject him to the death penalty. I need an opportunity to
3 sit and talk with him in a reasoned manner about the fact of
4 his being convicted. And I would ask the Court for a
5 reasonable period of time in which to consult with my client
6 at this time. And I would ask the Court to grant us at
7 least until tomorrow morning at 9:00 o'clock to begin
8 presenting evidence with regard to the mitigation phase,
9 assuming the State is going to present any case in
10 aggravation. I assume that they would at least make an
11 offer of that. That is the only motion that I would have at
12 this time, Your Honor, is for -- and I know you've asked the
13 jurors to consider that. But I would also ask the Court to
14 consider our need to consult with our client, to make sure
15 that our client understands the need to continue in a manner
16 in which he has done so far during this trial and has
17 conducted himself appropriately at all times. I need an
18 opportunity to talk with him, to just go over the process,
19 which I've done in the past, but I think given the enormity
20 of the verdict that's just been handed down against him, it
21 would not be inappropriate. And I understand the Court has
22 considerable discretion with regard to the timing of the
23 sentencing phase of the trial. And under the circumstance,
24 Your Honor, I would ask the Court to consider granting Mr.
25 Cromartie and his attorneys a reasonable period of time to

1 get all of our witnesses together. Some of them are here.
2 Some of them are available by call. But I really need just
3 some time to put it all together, all in line and put them
4 on the stand so that the jurors can hear what they need to
5 hear with regard to mitigation. And I would ask the Court
6 for that consideration.

7 THE COURT: All right, sir. Mr. Mears, I'm going to
8 take that request under consideration at this time and not
9 make a decision right at this moment in regards to that
10 particular request.

11 Gentlemen, do you have your Unified Appeal Checklist
12 with you?

13 Gentlemen, let me refer your attention to Section 3,
14 the trial --

15 MR. MEARS: I, I'm sorry, Your Honor. May I have just
16 one moment with my client before we start?

17 THE COURT: Yes, sir.

18 (Whereupon there is a brief delay)

19 THE COURT: Let me refer your attention to Section 3,
20 Trial Proceedings, Sentencing Phase.

21 Are there any issues which may arise regarding the
22 admissibility of evidence in the sentencing phase that
23 Counsel for either party is aware of?

24 MR. MEARS: Your Honor, I would ask the Court, and I
25 have not had an opportunity to reduce this to writing at

1 this time, but I would ask the Court to issue an order in
2 limine, I suppose, to any reference to the Madison Street
3 Deli convictions or any of the facts relating to the Madison
4 Street Deli until and unless the State has put up
5 aggravating circumstances as they relate to the Junior Food
6 Store. We had alluded to this in argument previously, Your
7 Honor, about the concern that the Defense has with regard to
8 the jurors using the events at the Madison Street Deli to
9 convict Mr. Cromartie of the Junior Food Store crimes. I'm
10 now concerned that the jurors, absent very stringent and
11 directed instructions, will use the Madison Street Deli
12 events as part of their sentencing determination. Non
13 statutory aggravators would be the only way that the Madison
14 Street Deli could come into play during the sentencing phase
15 of this trial. The State has to present aggravating
16 circumstances. The jurors have to find beyond a reasonable
17 doubt the existence of at least one statutory aggravator
18 before they can consider any non-statutory aggravating
19 circumstances.

20 So I would formally request the Court to issue an order
21 directing that no argument or evidence be resubmitted to the
22 jurors concerning the Madison Street Deli until such time as
23 there had been a determination that the jury has found
24 beyond a reasonable doubt one of the statutory aggravating
25 circumstances. That's one motion, Judge.

1 THE COURT: All right, sir. Let me go ahead and
2 address that motion if I may. Of course, it's my
3 understanding that the jury may consider all of the evidence
4 presented during the entire trial in regards to deciding
5 what an appropriate sentence is. Deciding, first, whether
6 or not there are aggravating circumstances, and then
7 deciding what an appropriate sentence is.

8 At this point in time the jury has found the Defendant
9 guilty of the offense of Murder, the offense of Armed
10 Robbery. That, in and of itself, is evidence in the case
11 about which the jury could at this time find at least one
12 statutory aggravating circumstance. So I'm not inclined at
13 this time to enter a Motion in Limine. The State, it
14 appears to me, could, could not present any -- would not
15 have to present any further evidence in the sentencing
16 phase. Could rely on the evidence presented during the
17 guilt-innocence phase and if the jury decided to do so,
18 could find beyond a reasonable doubt the existence of at
19 least one statutory aggravating circumstance, if not more
20 than one. And, therefore, I'm going to overrule and deny
21 that Motion in Limine.

22 MR. MEARS: Your Honor, my next motion would be a
23 motion, assuming for the sake of this motion, the Court has
24 made its ruling with regard to that matter on the basis that
25 the State has proven the existence of one, and I'm not

1 trying to put words in the Court's mouth.

2 THE COURT: Well, --

3 MR. MEARS: You've stated that they've proven one
4 statutory aggravator in the sense that they've proven armed
5 robbery --

6 THE COURT: Maybe that's the wrong terminology. What I
7 mean to say, there's sufficient evidence in the record, in
8 my opinion, for the jury to decide whether or not statutory
9 aggravating circumstances have, in fact, been proved beyond
10 a reasonable doubt by the State.

11 MR. MEARS: And that's the way I understood the Court
12 to be ruling. However, Your Honor, I, I would respectfully
13 disagree that it's, that it can be handled that way. I
14 simply would argue to the Court that jurors can, in fact,
15 find a Defendant guilty of armed robbery and then not find
16 the statutory aggravating circumstance beyond a reasonable
17 doubt. The finding of guilt does not per se make an
18 aggravating circumstance.

19 THE COURT: I don't disagree. I'm not, I'm not stating
20 that they're automatically going to have to find aggravating
21 circumstance. I'm simply stating that in my opinion there's
22 sufficient evidence in the record at this time for them to
23 do so, such that, for instance, if the Defense made a -- if
24 the State didn't put up any evidence, the Defense made a
25 motion for a directed verdict in regards to the possible

1 imposition of the death penalty or imprisonment for life
2 without parole, I think there's sufficient evidence in the
3 record to overrule and deny that motion at this time.

4 MR. MEARS: I, I understand, Your Honor. I would now
5 move for a directed verdict with regard to the aggravating
6 circumstances absent any further showing by the State,
7 particularly with regard to aggravating circumstance as set
8 forth as SOCGA 17-10-37, which is generally the, called the
9 B-7 aggravator in that the offense of, and murder of Richard
10 A. Slyszy was outrageously or wantonly vile, horrible or
11 inhuman in that it involved torture, depravity of mind or an
12 aggravated battery to the victim. I would move for a
13 directed verdict with regard to that particular aggravating
14 circumstance based upon the State's case-in-chief in that
15 there was no evidence presented, in fact, there was evidence
16 contrarily presented that the murder of Mr. Slyszy was a
17 murder which would be contemplated by the aggravating
18 circumstance set forth under B-7 of 17-10-30. The
19 testimony, as I'm sure the Court recalls the testimony of
20 the physician, the testimony of Dr. Parker, excuse me, Dr.
21 Parker and the argument made by Counsel in closing argument
22 that the death was instantaneous upon the shooting of Mr.
23 Slyszy with the shots from the .25 caliber revolver would
24 exclude any consideration of the aggravator set forth as B-7
25 on the State's notice of aggravating circumstances. And I

1 would ask the Court to exclude that particular aggravator
2 from even being submitted to the jurors at this time.

3 THE COURT: Any response from the State, gentlemen?

4 MR. MITCHELL: Judge, I just think that'd be a question
5 of fact for the jury, as to whether or not the killing was
6 outrageously wanton or vile based upon the evidence that
7 we've heard. I'd think that there would be sufficient facts
8 in the record that they, they could find that. I think it'd
9 be an issue of fact for the jurors.

10 MR. MEARS: Your Honor, could I just -- And I don't
11 want to just prolong this. But there's a great deal of
12 confusion among all participants in death penalty trials
13 about what B-7 means. It's the subject of much litigation
14 that's ongoing right now in the state and federal system.
15 Because the B-7 aggravator doesn't, doesn't -- it's not
16 warranted simply because the murder was outrageously or
17 wantonly vile, horrible or inhumane. It has to involve, and
18 I'm referring to the McMicken case, I don't have a cite off
19 the top of my head, but it's McMicken versus State out of
20 Douglas County, where the Court dealt with this type of
21 issue. The murder has to involve torture, depravity of
22 mind, or an aggravated battery to convict them.

23 What I'm submitting to the Court, Your Honor, is that
24 the second prong, that's my terminology, of that B-7
25 aggravator clearly cannot be established by the facts that

1 have been submitted in this particular case. Any murder is
2 vile. Any murder, you know, no matter what, is, fits the
3 first part. And I think that's what the Courts have held.
4 What -- And you've already charged the jury simply because
5 an individual is found guilty of the offense of murder
6 doesn't entitle a jury to sentence that person to death.
7 See, that's why we have ten statutory aggravators that have
8 to be proven beyond a reasonable doubt. B-7 requires that
9 there be proof beyond a reasonable doubt that the murder
10 involved torture, depravity of mind or an aggravated battery
11 to the victim. There was no testimony of any type of an
12 aggravated battery. There was no testimony of any type of
13 torture to the victim. Depravity of mind cannot, I would
14 submit, Your Honor, be shown by the mere act of shooting
15 someone. There has to be something more. And I believe
16 that's a correct statement of, at least the interpretations
17 of this. And, therefore, I would ask the Court to exclude
18 B-7 as a consideration by this juror, this jury in the
19 sentencing phase of this trial.

20 THE COURT: All right, sir. Mr. Mears, I'm likewise
21 going to take that under reservation at this time. I've got
22 the McMicken case with me and I just need to review that,
23 that portion of that particular case --

24 MR. MEARS: And, Judge, so that --

25 THE COURT: -- before I make that particular ruling.

1 Mr. Hutchings?

2 MR. HUTCHINGS: Yes, sir. Could I -- Put that in the
3 file, sir.

4 MR. MEARS: McMicken dealt with the torture aspects, as
5 the Court is aware. And I want to make sure the Court --
6 I'm simply citing that as a comparison for the Court to make
7 a ruling in this case. I'm not citing that as controlling
8 on this issue, because McMicken involved whether or not the
9 shooting of two individuals and whether or not the torture
10 could be mental torture of the third party or mental torture
11 of one of the victims. It, it talked --it has its dicta, a
12 lot of the language which I've just tried to present to the
13 Court. And I want to make sure the Court understands I'm
14 submitting it for that purpose.

15 THE COURT: Thank you, sir.

16 Any other issues that we need to address at this time
17 regarding the admissibility of evidence during the
18 sentencing phase, gentlemen?

19 MR. MITCHELL: Nothing from the State, Your Honor.

20 MR. MEARS: Your Honor, I believe the Rule 3 provides
21 an opportunity for the Defendant to make motions in limine.
22 In anticipation of aggravation, I've done that.

23 I think it also agrees to any stipulations or provides
24 for any stipulations. Could I ask whether or not the State
25 wishes to offer any stipulations for consideration to the

1 jurors rather than the presentation of evidence by the
2 State? I'm asking them if they -- them -- I'm asking Mr.
3 Hardy or Mr. Mitchell if they have any proposed stipulations
4 of fact that they would like for Mr. Cromartie's attorneys
5 to consider rather than the presentation of live evidence or
6 documentary evidence?

7 MR. HARDY: Well, we'd submit all the evidence which
8 the Court has already evidenced, witnesses and documentary.
9 We'd like to resubmit that at the appropriate time for
10 consideration in the sentencing phase. I think Mr.
11 Kleinrock had asked whether or not Mr. Lundy's video could
12 be shown in lieu of Mr. Lundy appearing in person. And
13 that, that's fine with us. I think they've already taken a
14 video deposition of Mr. Lundy, the man with cancer?

15 THE COURT: Yes, sir.

16 MR. HARDY: And he had asked whether or not they could
17 play that. And I think that's why they took the video so
18 they could play it if need be. And there was a letter from
19 Dr. Morley stating the man was ill and could not come to
20 court.

21 MR. MEARS: And that, that's one of the areas I wanted
22 to make sure that we didn't have any disagreement on,
23 because, yes; I would like to address that. With that
24 stipulation, and I appreciate the stipulation of allowing us
25 to use Mr. Lundy's videotaped deposition. I believe the

1 letter he has from his doctor indicates that he's not
2 available. And with that stipulation we would like, at the
3 appropriate time, to present that videotaped deposition of
4 Mr. Lundy.

5 THE COURT: All right, sir. Mr. Hardy, I -- maybe I
6 misinterpreted the statements of the Defense a moment ago.
7 My understanding of the question was whether or not the
8 State would wish for the Defense to consider whether or not
9 the parties could stipulate any, any evidence to the jury
10 that the State would otherwise intend to present. Was that
11 the, the question?

12 MR. MEARS: Let me rephrase it, Judge, because I wasn't
13 clear. Is the State going to simply offer to the jury all
14 of the evidence that was presented in the guilt-innocence
15 phase, or do they intend to call live witnesses to put that
16 evidence back before the jury? I am prepared to stipulate,
17 without waiving any objections or any reservations of rights
18 with regard to any matter that took place during the
19 sentencing phase, excuse me, the guilt-innocence phase, to
20 stipulate that that evidence has already been presented to
21 them. In other words, some, some prosecutors, Judge, will
22 call the same witnesses back, put them back before the
23 jurors to put the facts back into the record before the
24 jury. And I think they probably have a right to do that.
25 I'm just asking, do they intend to do that? If they don't,

1 or if they want to stipulate any particular fact, any
2 particular witness' testimony, I'm prepared to do that at
3 this time, if they will simply alert me as to which witness
4 or what stipulation they would like to consider.

5 THE COURT: Gentlemen, my understanding is that any
6 evidence that has already been presented and already
7 admitted in the guilt-innocence phase can be considered by
8 the jury in the sentencing phase.

9 MR. MEARS: And that's my understanding subject to
10 finding the statutory aggravator. What I'm -- I'm not very
11 articulate, I guess, Judge. What I'm trying to say is, the
12 prosecutors aren't limited to that. Unfortunately, I think
13 they can put up live witnesses again --

14 THE COURT: Yes, sir.

15 MR. MEARS: -- you know, put the same evidence up. And
16 what I'm asking, if that's something that's going to be
17 done, I'm willing to stipulate any part that they feel that
18 they need to put back up again as far as a live witness.

19 THE COURT: Any response, gentlemen?

20 MR. HARDY: We don't anticipate to call live witnesses
21 to say what they've already said, Your Honor. It's already
22 into evidence.

23 MR. MEARS: Okay. Then that, that answers that
24 question.

25 THE COURT: All right, sir. Gentlemen, I believe we've

1 already addressed any issues which may arise regarding
2 specific statutory aggravating circumstances.

3 Any issues at this time which Counsel are aware of
4 which may arise in regards to closing argument?

5 MR. HARDY: Not at the time, Your Honor.

6 THE COURT: The Court's charge?

7 MR. MEARS: I can't -- We have submitted proposed
8 requests to charge as far as the sentencing phase. Those
9 have been served on the State. I can't anticipate any, any
10 objections that would need to be made at this time with
11 regard to closing argument of Mr. Mitchell. I would simply
12 reconfirm in my own mind, in the sentencing phase the
13 Defendant has the right to close after the presentation of
14 all evidence, that the Defendant has the last closing
15 argument at the sentencing phase.

16 THE COURT: My understanding is that the State will
17 have the first argument, the Defendant will have the last
18 argument.

19 MR. MEARS: That, that's my understanding.

20 THE COURT: All right, sir. Gentlemen, anything at
21 this time prior to bringing the jury back in and finding out
22 what their preferences are at this point in time?

23 Gentlemen, if they prefer to proceed today, then we may
24 take a very short recess to consider some matters and then
25 we'll decide what to do at that time.

1 If you would bring the jury back in. Oh. Would you,
2 Mr. Sheriff, would you ask them to stop for just a moment
3 before they bring them in?

4 SHERIFF POWELL: Just a moment. Just a moment.

5 THE COURT: It'll just be a minute. Just be a minute.
6 If you would shut that door. Thank you, sir.

7 All right. Ladies and gentlemen, we've received a
8 request from the jurors to recess until 9:00 A. M. Monday
9 morning.

10 Any input from either party?

11 MR. HARDY: If that's what they want to do, Judge,
12 let's do what they want to do.

13 MR. MEARS: Your Honor, we would ask the Court to grant
14 that request of the jurors and we would appreciate it if the
15 Court would do that.

16 THE COURT: All right, sir. Gentlemen, I would intend
17 to give the same cautionary instructions that I have
18 previously given this jury. Does either party wish the
19 Court to consider any other cautionary instructions at this
20 time?

21 MR. HARDY: Just emphasize that they still are the jury
22 and they will continue to be the jury until the case has
23 reached its finality, Your Honor. And we'd emphasize the
24 other charges, the newspaper, the TV, the talking with
25 friends and neighbors, that kind of thing.

1 THE COURT: Yes, sir. Anything else?

2 MR. MEARS: Your Honor, with regard to opening
3 statements at the sentencing phase, does the Court have any
4 questions with regard to that or any input or any direction
5 to Counsel with regard to possible opening statements at the
6 time of the sentencing phase?

7 THE COURT: Not at this time.

8 MR. MEARS: Can we anticipate that we would be allowed,
9 both sides be allowed to make a short opening statement at
10 the sentencing phase?

11 THE COURT: Gentlemen, ordinarily, it's my
12 understanding that we move into the, to the evidence. Of
13 course, the parties have an opportunity for a concluding
14 argument. I've got some time. Let me consider that.

15 MR. MEARS: What I would request is some, probably five
16 or ten minutes. The reason I ask it, the Unified Appeal
17 doesn't address that, Judge. And some, I think it's some
18 courts will allow for a brief opening statement. Some
19 courts will allow for expansive opening statement. Some
20 courts have said opening statements will not be allowed. I
21 would appreciate the Court to consider allowing at least a
22 brief five minute opening just so that we can set the stage
23 for the jurors as to what they can expect to hear from us
24 during the sentencing phase. And I -- there's no authority,
25 Judge. I wish there were, but there's no authority where I

1 can say we have a right to open the sentencing phase, either
2 side. I don't know of any case law or any, any statutory
3 law that provides for opening statements at the sentencing
4 phase. For a long time I assumed that there was because
5 everyone was doing it. But some courts have taken the
6 position that opening statements, if made at the sentencing
7 phase, are to be very limited. I can assure the Court if
8 you were to allow us to have a brief opening statement, it
9 would be limited to no more than five minutes. And I would
10 ask you to consider allowing us to do that.

11 THE COURT: Any response from the State?

12 MR. HARDY: We'd leave it with the Court, Your Honor.

13 THE COURT: All right. Gentlemen, one issue I want to
14 bring in, up real quick before we bring the jury back in is
15 this, and that's in regards to the alternate jurors. At
16 this time I am not inclined to excuse the alternates. I
17 think it's still, if, if the case is tried throughout both
18 phases and the jury imposes the death sentence, and the
19 Court overturns the sentence portion of the trial but not
20 the guilt-innocence portion of the trial, then the case is,
21 the sentence phase is tried by a completely different jury
22 than what heard the guilt-innocence phase. It seems
23 appropriate to me that if for some reason we have to excuse
24 one of the jurors for whatever reason, that it would still
25 be appropriate at this time to substitute with an alternate

1 juror.

2 Any response?

3 MR. MEARS: We, we would think that would be
4 appropriate, Your Honor, to keep them.

5 THE COURT: All right, sir.

6 MR. MEARS: Judge, at the concluding of all this could
7 we have a brief ex parte conference with the Court with
8 regard to a particular funding issue with a particular
9 witness?

10 THE COURT: Yes, sir.

11 MR. MEARS: Thank you.

12 THE COURT: You can bring the jury in, please, sir.

13 (Whereupon the jury returns to the courtroom,
14 after which the following transpired)

15 THE COURT: Mr. Sheriff, could I see you for a moment?

16 (Whereupon Sheriff Powell confers with the Court at the
17 Bench)

18 THE COURT: Ladies and gentlemen, it appears that you
19 would like to recess until Monday morning at 9:00 A. M. Is
20 that correct? We will recess until Monday morning at 9:00
21 A. M.

22 Ladies and gentlemen, I am going to go over with you
23 again the cautionary instructions that I have given you
24 throughout the week.

25 Let me caution you and urge you to consider the fact

1 that it's probably more important at this time than at any
2 time during your service on this case that you be very
3 cognizant of the fact that persons may have read in the
4 paper or heard on the news or otherwise the verdict in this
5 case, in the guilt-innocence phase, may be cognizant of
6 reading the newspaper or otherwise that this case is
7 proceeding into a second or penalty phase. And very, very
8 possible, very likely, very probable that some persons are
9 going to be talking about it, be it at ball games, wherever,
10 out in the public, at church and otherwise. You just need
11 to recognize that and be very careful not to be exposed to
12 any talk whatsoever. Number one, about whether or not the
13 verdict in the guilt-innocence phase, whether they agree
14 with it or not. Number two, not to be exposed to any
15 conversations concerning someone else's opinion about what
16 would be an appropriate sentence in this case, from someone
17 who has not been here and has not heard all of the evidence.

18 So with that in mind, again, do not read anything, and
19 at this time I don't know if any of you have been having
20 someone edit your local paper for you, at this time let me
21 ask that you simply do not look at the local newspaper until
22 your services in this matter are concluded. Don't read any
23 other paper, newspaper that is circulated in this area until
24 this matter is concluded. Do not listen to anything on the
25 radio or TV about this particular case until it's concluded.

1 If I have not already said it, don't talk with anyone
2 about this case, allow anyone to talk about it in your
3 presence or within your hearing. In addition, please do not
4 read any magazines, novels or other material which has a
5 violent theme, content, subject matter or plot. Do not
6 watch any movies or television shows that have any violent
7 themes, content, plot or subject matter.

8 Whatever your decision is in regards to the appropriate
9 punishment and sentence in this case should be based, again,
10 solely on the evidence presented to you during the guilt-
11 innocence phase, the evidence which will be presented to you
12 during the sentencing phase, and the instructions of the law
13 which will be given you by the Court at the appropriate
14 time.

15 With that in mind, again, please be cautious over the
16 weekend not to be exposed to anything whatsoever by anyone
17 whatsoever about this case.

18 With that, I hope you have a restful weekend. See you
19 Monday morning.

20 Everyone remain -- Ladies and gentlemen, we're going to
21 ask everyone to remain here in the courtroom for about five
22 minutes to give you an opportunity to disperse easily.

23 Thank you.

24 (Whereupon the jury retires from the courtroom,
25 after which the following transpired)

1 THE COURT: Any matters that need to be taken up at
2 this time prior to recessing?

3 MR. HARDY: No, Your Honor. Thank you.

4 MR. MEARS: Your Honor, could I be -- Could the record
5 reflect as to what precautions are going to be taken with
6 regard to preservation of the items of evidence that have
7 been used? I know they're in the jury room at this point.
8 Is there any particular mechanism for insuring the, insuring
9 that the evidence is not moved, changed, altered in any way
10 during this, this weekend break?

11 THE COURT: Mr. Mears, of course, the jury room can be
12 locked up. It may be a good idea -- it's my understanding
13 that the Clerk of the Court has had built a special locking
14 cabinet for this particular case which is secured in the
15 Clerk's office. And it may be a good idea for us to simply
16 round that evidence up and secure it that secured locked
17 cabinet in the Clerk's office over the weekend. And we will
18 have it Monday morning.

19 MR. MEARS: I was -- I would like to ask that that be
20 done if that's possible, Judge.

21 THE COURT: All right, sir. That shall be done.
22 Anything else?

23 MR. MEARS: Other than our request for a brief ex parte
24 and I could probably do it at the Bench if the Court will
25 let me just for a moment with the regard to the request for

1 a ex parte hearing considering --

2 THE COURT: All right, sir.

3 MR. MEARS: May I approach the Bench?

4 THE COURT: Yes, sir.

5 (Whereupon an ex parte hearing was held at the Bench
6 with only Mr. Mears, the Court and court reporter being
7 present)

8 THE COURT: We'll be in recess until 9:00 A. M. Monday
9 morning.

10 (Whereupon the Court is recessed for the day, with
11 the proceedings to be resumed on Monday morning.)

12 * * * * *

1 (The eleventh day of proceedings commences at
2 approximately 9:05 A. M. on Monday, September the
3 29th, 1997, outside of the jury's presence)

4 THE COURT: Ladies and gentlemen, before we bring the
5 jury in, for purposes of the record, it's the Court's
6 understanding that Counsel, although not authorized by
7 statute or otherwise, Counsel has asked the Court in its
8 discretion to allow a brief opening statement in this
9 particular matter. Is that correct, gentlemen?

10 MR. HARDY: Yes, sir.

11 MR. MEARS: That's correct, Your Honor.

12 THE COURT: All right. Gentlemen, I will, will allow
13 that.

14 In addition, it's the Court's understanding that
15 Counsel for Defense has requested the Court to send out with
16 the jury for their deliberations a copy of the entire charge
17 in regards to the sentencing phase. Counsel has this
18 morning had an opportunity to review that charge, the charge
19 that the Court proposes to give in this particular matter.
20 Is that correct?

21 MR. MEARS: That's correct, Your Honor.

22 THE COURT: And is that the, is that the proposed
23 charge that Counsel desires for the Court to send out?

24 MR. MEARS: Yes, Your Honor. We would ask the Court to
25 have the charge sent out with the jury. We're still

1 reserving all objections. However, we feel that it would be
2 beneficial to the process if the jurors had the written
3 request to fall back on if there's any question about what
4 Your Honor actually charged.

5 THE COURT: The, the entire written request as opposed
6 to simply a listing of these statutory aggravating
7 circumstances. Is that correct?

8 MR. MEARS: That's correct.

9 THE COURT: All right, sir.

10 Mr. Mears, at this time having given the matter
11 consideration, I will, will send the entire charge out based
12 upon the request of the Defense.

13 MR. MEARS: Thank you, Judge.

14 THE COURT: Yes, sir.

15 Any other matters that need to be addressed prior to
16 bringing the jury in?

17 All right. You may bring the jury in.

18 (Whereupon the jury returns to the courtroom,
19 after which the following transpired)

20 THE COURT: Good morning, ladies and gentlemen.

21 Ladies and gentlemen, let me briefly go over with you
22 the procedure that we will follow in this second phase.

23 Prior to the introduction of any evidence, the parties
24 will have an opportunity to make a brief opening statement
25 to you, outlining what they expect the evidence to show

1 during the sentencing phase of this particular trial.
2 Following the opening statements, then the parties will be
3 allowed to offer any evidence for your additional
4 consideration, any evidence which is admissible by law for
5 your additional consideration in determining what is an
6 appropriate penalty, punishment and sentence in this
7 particular matter.

8 Following the introduction of all of the evidence, the
9 party will have an -- the parties will have an opportunity
10 to make a closing argument or summation to you. That's
11 their opportunity to argue to you what they think the
12 evidence has, in fact, shown you during the penalty phase.
13 In addition, it's their opportunity to try to persuade you
14 to decide on an appropriate penalty in a particular manner
15 and on a specific penalty.

16 Following the summation or closing arguments, then I
17 will charge you on the law that is applicable for your
18 consideration and for you to follow in determining what is
19 an appropriate sentence.

20 Now, ladies and gentlemen, let me first inquire whether
21 or not over the weekend any of you did have any exposure
22 whatsoever from any outside sources concerning what should
23 be an appropriate sentence in this particular matter? Now,
24 if I do have an affirmative or positive yes response, then
25 what I need to do is speak with that particular juror or

1 jurors individually.

2 So at this time let me ask whether or not over the
3 weekend, since we recessed on Friday afternoon, have any of
4 you read anything about this particular case? Have any of
5 you heard anything, radio, TV or otherwise, about this
6 particular case? Has anyone contacted you and told you not
7 to tell me that they've contacted you in regards to what
8 would be an appropriate penalty in this particular case?

9 Thank you, ladies and gentlemen.

10 Gentlemen, are you ready to begin with your opening
11 statements?

12 MR. HARDY: Please, Your Honor.

13 MR. MEARS: I think Mr. Bryant would have the opening
14 for us, for the Defense.

15 MR. HARDY: Please, Your Honor. Mr. Bryant. Mr.
16 Mears.

17 Good morning again, ladies and gentlemen. I'll keep
18 this brief. Today is Monday and we're starting the second
19 phase of this particular trial. This will be the sentencing
20 phase. You've heard the evidence from the guilt-innocence
21 phase. It was over with Friday afternoon. I think this
22 particular phase of the trial will be quite similar to the
23 other phase of the trial. There'll be -- The State will
24 resubmit all the evidence which you've already heard in the
25 guilt-innocence phase of the trial. And we anticipate that

1 Mr. Mears will be given an opportunity to call various
2 mitigating witnesses. Then the Judge will give you the
3 charge again, a different charge or an addition to the
4 charge you've already heard. And then you'll retire back to
5 your room to reach a verdict in this particular, excuse me,
6 to reach a sentence in this particular case.

7 You've gone through the guilt-innocence phase and now
8 we're in the sentencing phase. It's quite similar in the
9 types of steps and the type of procedures. You may or may
10 not be asked to go out to your witness -- to your room while
11 certain matters are discussed. It may or may not happen.
12 But we don't anticipate this being very lengthy, but it is
13 important and please listen and remember what you've already
14 heard. Thank you.

15 THE COURT: Mr. Bryant?

16 MR. BRYANT: Thank you, Your Honor.

17 Good morning, ladies and gentlemen. We are about to
18 embark upon what is sometimes referred to as the second
19 phase of this trial. And it is for most of you, if not all
20 of you, perhaps the most difficult part of this trial. And
21 I'm going to be, at this point, taking a few minutes of time
22 and I appreciate the fact that you've given us your
23 attention through the part of trial that you have so far.
24 And if you will just bear with us a little longer, we
25 hopefully will be able to give you an outline of what you

1 can expect in this part of the trial.

2 As Mr. Hardy has said, they intend to resubmit the
3 evidence that's already come to you. We, however, in
4 mitigation wish to bring some additional evidence to you
5 that we believe will be important to you as you make your
6 decision today regarding the life of Jeff Cromartie.

7 There are a couple of people I want to talk to you
8 about very briefly. I'll just give you some names. You'll
9 hear from them. You'll see them. And you'll be able to
10 determine from what they say, we hope that will have
11 information that will help you in deciding this case.

12 We expect to bring to you Angeline Cromartie, who is
13 Mr. Cromartie's paternal grandmother. She lives over in
14 Grady County and worked out at Pebble Hill for a number of
15 years. And she'll tell you a little bit about Jeff and what
16 she knows about him and what sort of child he was.

17 I expect also that Jeff's cousin, Charlene Johnson,
18 will be here to testify. We expect that she will talk to
19 you about Jeff and what sort of young man he is.

20 I expect that Jeff's brother, Anthony Cromartie, will
21 also come to you and tell you about their lives growing up
22 together.

23 Joe Lundy is a young man who lives here in Thomas
24 County who is very ill with cancer. You will see him on
25 videotape. He is, as I understand it, too ill to be here

1 himself. He has cancer and we have by agreement have taken
2 his deposition and you'll be able to see and hear him as he
3 tells you about Jeff. He is the person who basically
4 considers himself to be Jeff's father. In growing up he --
5 he was one of the reasons why Jeff was here, was to spend
6 time with him.

7 And finally, I think we'll bringing to you Jeff's
8 mother, Ms. Estelle. And I think when you hear from her she
9 will tell you about Jeff, his life, how he came to be where
10 he is today.

11 And we will ask you to pay attention to each of these
12 witnesses as you have done all the witnesses that have come
13 thus far. And we urge you as you make your deliberations
14 and your considerations in this matter to bear in mind what
15 each of these witnesses say and to understand that for them
16 this is a chapter in Jeff's life. And we do ask that you
17 give it earnest and sincere consideration. Thank you.

18 THE COURT: Mr. Hardy?

19 MR. HARDY: Your Honor, the State would resubmit all of
20 the evidence which you've heard from last week in the guilt-
21 innocence phase including all the documentary evidence, all
22 the live witnesses, all the photographs, everything that's
23 already been introduced into evidence, Your Honor, for
24 consideration in this particular phase of the trial.

25 MR. MEARS: Your Honor, we would simply reaffirm and

1 restate all objections and exceptions to the evidence as it
2 was presented the first time. We would ask the Court to
3 accept those exceptions and objections during this phase as
4 if they were made individually as they were made during the
5 first phase of the trial.

6 THE COURT: Yes, sir. The Court will do so.

7 Ladies and gentlemen, as the Court has previously
8 informed you during the trial, during the guilt-innocence
9 phase, I will reinform you at this time and will also inform
10 you again during the charge at the end of the evidence in
11 this case, that you may consider all of the evidence
12 presented to you in this case in determining what is an
13 appropriate sentence in this case. That is, all of the
14 evidence submitted in the guilt-innocence phase of the trial
15 as well as the evidence presented during this particular
16 phase of the trial.

17 Mr. Hardy, does the State have any additional evidence
18 to present at this time?

19 MR. HARDY: No, sir. Thank you.

20 THE COURT: State rest?

21 MR. HARDY: Yes, sir.

22 THE COURT: Mr. Mears?

23 MR. MEARS: Yes, Your Honor.

24 Your Honor, we at this time would call Ms. Angeline
25 Cromartie to the stand.

1 THE COURT: Ms. Cromartie, if you would have a seat
2 right here, please, ma'am.

3 Ms. Cromartie, if you would raise your right hand,
4 please, ma'am? I need to administer the oath to you.

5 Do you solemnly swear or affirm that the evidence
6 you'll be giving this Court and this jury in the matter now
7 pending before this Court shall be the truth, the whole
8 truth and nothing but the truth, so help you God?

9 MS. CROMARTIE: Would you repeat that?

10 THE COURT: Yes, ma'am. Do you solemnly swear or
11 affirm that the evidence that you will be giving this Court
12 and this jury in the matter now pending before this Court
13 shall be the truth, the whole truth and nothing but the
14 truth, so help you God?

15 MS. CROMARTIE: Yes. The whole truth.

16 THE COURT: Thank you, ma'am.

17 Mr. Mears?

18 ANGELINE CROMARTIE

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MEARS:

22 Q Ms. Cromartie?

23 A Yes, sir.

24 Q My name is Mike Mears. We've met before.

25 A Yes, sir.

1 Q Met out on the front porch of your house.

2 A Yes, sir.

3 Q You recall that. I'm going to ask you some questions
4 and I want you to talk to the ladies and gentlemen of the jury
5 about your answers to the questions.

6 A All right.

7 Q I'm going to ask you some questions about your
8 grandson.

9 A Yes, sir.

10 Q Okay. First of all, would you please tell the ladies
11 and gentlemen of this jury how old you are and how long you've
12 lived in this community?

13 A All right. First, I want to speak every -- all, all
14 the whole court.

15 Q Ms. Cromartie, you, you can sit down. You don't have
16 to stand up.

17 A Oh, I don't have to --

18 Q They only make the lawyers stand up. You don't have to
19 do that.

20 A Well, I want to say good morning to everyone, ya'll.
21 And my name is Angeline Cromartie and I'm Jeff's grandmama. My
22 age is seventy-three. I've done seventy-three. I'm going on
23 seventy-four. And I raised him. And lots of time he enjoy
24 'cause in the country he can play a lot on my lawn, play. And
25 they like, he like to play ball. And I have more grandchildren.

1 They come visit me and I be in there cooking. I tell, I say,
2 ya'll children go outside and play. I say, when I get dinner or
3 whatever I got ready for you, I'll let ya'll know. And they just
4 love ball games, playing. And I say, now, listen, I'm gonna tell
5 ya'll while ya'll playing, if you hurt one another, I'm gonna
6 have to kinda be real cross with them. I say, I'll get me a
7 switch and I lay it up on the porch. I say, you never get too
8 old. I said, I'm gonna put this switch on you. You've got to
9 mind grandma. And they'll play all day long out there in the
10 yard. And on Sunday I got them ready. I went to Sunday School,
11 and take them out to Sunday School. I didn't send the other
12 children. I carry them there out to Sunday School and we stay
13 over to church and we're back home. Now, I prepare a meal again.
14 They ran out there in the yard playing with each other and they
15 had a good time. I enjoy fixing for them. I do. I just love to
16 cook. I'm a cook. I just love to cook food. And they enjoy it
17 so very much. And they didn't -- when I said anything to them,
18 they mind grandma. I let 'em know. I say, now, you're gonna
19 mind grandma. I said, I got you a present. I get a little long
20 switch, you know, a little keen one and get them legs. I say,
21 I'm putting my present right here on this porch and don't nobody
22 bother it. And one start cutting up, I might cut up with you.
23 And they'd know to behave. And they, he was a real lower. He
24 mind me. I tell him, I say, you're gonna have to mind me. And
25 he stayed and he had a good time. When he come there, he just

1 love to come to grandma's house with the other grandchildren.

2 And I just enjoy them.

3 Q Ms. Cromartie, where did you work most of your, your
4 life?

5 A Well, most of my time I worked to Archbold Hospital. I
6 did twenty-six years cooking, preparing for the whole, you know,
7 anyone that come in and all patients and one who visit, the whole
8 community who feel like coming and eat. And then when they come
9 and eat they'll come by after they have their dinner and tell me
10 how much they enjoy it. That encouraged me to cook more and put
11 the little sketch and make it kind of bussom (ph.), you know,
12 'cause they like good eating.

13 Q Ms. Cromartie --

14 A They were fun.

15 Q Have, have you retired from Archbold now?

16 A Well, I have retired from Archbold, but I felt like I
17 need a little part-time job. I be around the house. All the
18 children going to school and grown too. And I've been out here
19 to the State Hospital and put in an application. I went out
20 there the first day and the lady say, oh, I just like how you
21 talk, and say, you've got this job. I didn't know it was gonna
22 be so quick, you know. And I was in the house, freshening up in
23 the house. I was setting on the porch. Everybody gone. Nobody
24 in the country but me. Children gone to school. And I say,
25 well, the lady hasn't called, talking to myself. The phone rang.

1 And I say, "Hello". She say, "Hello, is this Angeline
2 Cromartie"? I said, "Yes, ma'am; it is". She said, "Don't you
3 know -- say, come on out here and get an interview". And I come
4 around there and I say, "How many more till I have to come to get
5 the interview"? She say, "You already got the job".

6 Q Okay. Now, that's the job you have right now; isn't
7 it?

8 A Yes, sir.

9 Q At seventy-three you're still working --

10 A Working right on; yes, sir. I done, I done did
11 seventy-three and starting on seventy-four now. My birthday was
12 the 3rd of September.

13 Q Now, Ray Jefferson is your grandson by your son?

14 A Sure. He out here. He come.

15 Q Okay. Now, in growing up you say that you disciplined
16 him and he minded you?

17 A He did.

18 Q Now, did you see a whole lot of him after he got up
19 into a teenager?

20 A Well, he was getting a little growner, you know how it
21 is. Children -- He know I didn't play with him, you know. But
22 he'll come in there. When he come home, back home for vacation,
23 he come home and he always tell me, said, "Grandma, I love you".
24 I say, "I love you too, baby". I always talk nice to him. He's
25 glad to have a home. I say, well, spend some time with me, you

1 know. And he know grandma liked to cook for him. He just come
2 on in. And he gets older and older, every year make him get
3 older, you know, he'll go away, but he'll get a chance to call or
4 write me or something. And, oh, he say, oh, how much I love you,
5 grandma because you just was a good grandma. All my children
6 tell me that. And I say, well, just think my oldest son, let me
7 say this here, my oldest son, he had a birthday the 22nd of
8 September, made him fifty-five years old. He don't stand up and
9 talk back at me. I tell him, I said, now, listen, let me tell
10 you one thing, I'm the oldest now and I'm the mommie. I try to
11 teach and tell the thing what's right to go and take them to
12 church. I don't send them. I carry them. So they say -- my
13 oldest son tell me sometime, he say, mama, I -- I hold him pretty
14 tight talking, you know. Say, mama, say, it look like, sound
15 like you're fussing. I say, I'm not fussing. I said, I'm
16 talking the real thing to you. And here's a help, son, and you
17 go and raise your children and tell them the same, you know.

18 Q Ms. Cromartie, you know that your grandson has now been
19 convicted of the offense of murder?

20 A Um-hum (affirmative).

21 Q You've been told that; haven't you?

22 A Yes, sir.

23 Q And this jury has got to decide what's the appropriate
24 punishment for your grandson.

25 A Um-hum (affirmative).

1 Q Is it your desire to ask this jury to spare your
2 grandson's life and not sentence him to death?

3 A Well, I'd love to ask them that. Please, please,
4 (unintelligible), please, ma'am, will ya'll don't have him
5 sentenced to death. Give him a chance.

6 MR. MEARS: Okay. Thank you, Ms. Cromartie.

7 We have nothing further, Your Honor.

8 CROSS EXAMINATION

9 BY MR. HARDY:

10 Q Good morning.

11 A Good morning.

12 Q How you doing?

13 A I'm all right. How are you?

14 Q I think your grandson didn't live with you, or didn't
15 have much association with you except when he was a young child
16 because he moved off to Florida and he moved off to Pennsylvania;
17 didn't he?

18 A Yes. When he had a chance he'd visit me, you know.

19 Q But he didn't live around you when he got up in age?

20 A After he was a child coming up, you know, 'cause he was
21 real young then.

22 Q His teenage years and years after that, he didn't live
23 around you?

24 A No, sir. I see him every once in a while. He'd have
25 vacation or something and come in.

1 Q But you didn't have the influence over him when he got
2 to be a little older, teenager?

3 A No.

4 Q Ten or so, because he moved away; didn't he?

5 A Well, that's right. He was getting older then. He
6 felt like he was, you know.

7 Q And that was in Florida and Pennsylvania?

8 A Well, once -- you know, I didn't keep up the place he
9 was during, he was living at. He would write me a letter from up
10 there in Pennsylvania where he have -- well, I mean, I keep in
11 touch with him. He would write me back. But he was growing up
12 then. He didn't come and did like a child growing up like I was,
13 you know.

14 Q Is Joe Lundy your son?

15 A Sir?

16 Q Joe Lundy is your son?

17 A Yes, sir.

18 Q And he's, he's the one that's fifty-five, I think, just
19 turned --

20 A Yeah, that's my -- his name Charlie Cromartie. He out
21 here with me. He come this morning with me.

22 Q But Joe Lundy, is he the oldest child?

23 A Yeah, he's --

24 MR. MEARS: Your Honor, may I speak with Mr. Hardy
25 for a moment, please, sir. Excuse me.

1 THE COURT: Yes, sir.

2 (Mr. Mears confers with Mr. Hardy)

3 BY MR. HARDY:

4 Q Do you still live at Beachton, ma'am?

5 A Right, sir.

6 Q Okay. That's where you grew up and you live?

7 A I, I come from Florida, down there around Leon County,
8 Florida. But I got married and my husband come over -- that's
9 where his home was, around here in the Beachton area.

10 Q Yes, ma'am.

11 A And so after that he passed, and so I just stayed right
12 around in the home and see to raise, you know, my children, they
13 got grown and they got married and they had their children. And
14 so I'm back at home.

15 MR. HARDY: Thank you, ma'am.

16 MR. MEARS: Thank you, Ms. Cromartie.

17 May she step down, Judge?

18 THE COURT: You may step down.

19 MR. MEARS: Watch your step there.

20 Call Ms. Charlotte Johnson.

21 THE COURT: Ms. Johnson, will you raise your right
22 hand, please, ma'am?

23 Do you swear or affirm that the evidence you'll be
24 giving this Court and this jury in the matter now pending
25 before this Court shall be the truth, the whole truth and

1 nothing but the truth, so help you God?

2 MS. JOHNSON: Yes, sir.

3 THE COURT: Thank you, ma'am.

4 Mr. Mears?

5 CHARLOTTE JOHNSON

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MEARS:

9 Q Charlotte, would you tell the ladies and the gentlemen
10 of this jury your full name and what your relationship to Ray
11 Jefferson Cromartie is?

12 A My name is Charlotte Johnson. And Ray Cromartie is my
13 cousin, first cousin on my mother's side.

14 Q And --

15 A He is my aunt, he is my aunt's son. And his mother is
16 just like my mother.

17 Q What was your maiden name, Ms. Johnson?

18 A Young.

19 Q Okay. Are you related to Lisa Young?

20 A Yes.

21 Q And what is her relationship to you?

22 A Lisa Young is my sister.

23 Q Okay. Now, what part of Thomas County do you live in?

24 A Thomasville.

25 Q Okay. And how long have you lived in Thomasville?

1 A Forty-one years.

2 Q Most of your life?

3 A Yes.

4 Q Okay. Ms. Johnson, as you were growing up did you have
5 an opportunity to know and be around and associate with Jeff's
6 mother, Estelle?

7 A Yes, sir.

8 Q Now, you had indicated that she was like, like a mother
9 to you. Would you just tell the ladies and gentlemen so they'll
10 understand what your relationship was and is to Estelle Cromartie
11 Barreau?

12 A Well, Estelle, she was sort of like my mother, sort of
13 like, she sort of raised me a little bit. And she was the first
14 one that bought my little prom dress. And we're just real close,
15 you know. And Christian and all kind of ways, you know. We're
16 just -- She's just like a mother to me.

17 Q And as a result of being that close to Estelle, have
18 you been close to Ray Jefferson Cromartie?

19 A Yes.

20 Q Tell the jurors so they'll understand what you're
21 talking about, how and in what relationship you've had with Jeff
22 over these years?

23 A Well, when Jeff was coming up I was sort of like the
24 babysitter. I mostly keep all of them, you know, 'cause we
25 grew up in a big family, so I was like the, you know like,

1 mostly babysit for all the children. And so I mostly kept Jeff
2 and his brother and my other cousins. So I was just like the
3 babysitter, like, like the mama with all of the children, like I
4 am now. I mostly, you know, be around lots of children. So I
5 mostly was there for Jeff also.

6 Q Now, was there a period of time when, after Jeff was
7 born and before he started school, that he and his mother moved
8 away from Thomasville, that you didn't have any contact with him?

9 A Yes.

10 Q What happened? Why, why did they move away, if you
11 know? And tell the jurors a little bit about how long you, you
12 were separated from Jeff?

13 A Well, they moved away after, well, you know, we had a
14 tragic, and our house had got caught on fire, so he lost his --
15 she lost her other son. And so then after then she had to get
16 away, you know, 'cause everything, all the memories just on her
17 son, so they, they moved and they got away. But I kept in
18 contact with the mother. So that's why they had to leave, 'cause
19 they had a death, we had a death in the family. And we had lost
20 everything. She had lost her son, other son.

21 Q How old were you when that happened, Charlotte? How
22 old were you when that tragedy occurred?

23 A I was thirteen.

24 Q What happened? Tell the ladies and gentlemen of the
25 jury about how the family lost Buddy Cromartie?

1 A In a fire. He got burnt up.

2 Q Where was the fire?

3 A It was on Jackson Street in Thomasville.

4 Q How old was Jeff then? How old was Jeff?

5 A Now?

6 Q No. When the fire occurred. Do you remember?

7 A Jeff was a baby and the little brother was something
8 like four. So Jeff was probably something about like two.

9 Q Can you tell the ladies and gentlemen of the jury what
10 happened? Were there just children at home? Were they being
11 left with other children? What happened? Could you tell the
12 ladies and gentlemen how that tragedy occurred?

13 A It was all children. My mother had came in from work
14 and she was asleep. So it was my sister, Lisa. It was Buddy,
15 the one that got burnt. And it was Jeff. They was all home. My
16 mother was asleep. And found out the house was on fire.

17 Q Was there ever any, any talk in the family about how
18 the fire started?

19 A They said it come through, by the heater.

20 Q Were the children playing with matches?

21 A They said through the gas heater. They mostly had them
22 little gas heaters back then.

23 Q Did anyone talk about the children trying to light the
24 heater and that's what caused the fire?

25 A No, sir.

1 Q There was no talk about matches or things like that?

2 A Uh-uh (negative).

3 Q When the fire broke out, who all was saved from the
4 fire?

5 A All of them but the little baby, Buddy, the one that
6 died. Lisa got burnt on her forehead. But everybody escaped
7 except for the little baby.

8 Q And that was Jeff's younger brother?

9 A He was up under the bed. He was trying to get out so
10 he went up under, back up under the bed. And that's where they
11 found him at. He died through the smoke, I think.

12 Q After that fire did Jeff's mother go through some hard
13 times?

14 A Yes. She was in the hospital when it happened.

15 Q Did it take her a long time to recover from the loss of
16 her baby?

17 A Yes, sir.

18 Q Did she leave town as a result of that, or partly as a
19 result of that?

20 A Yes, sir.

21 Q And you sort of lost contact with her, at least
22 personally for a period of time after that; didn't you?

23 A Yes, sir. But then, you know, after I was fixing to
24 get ready to go to the prom in my junior year, she bought my
25 first prom dress.

1 Q When did you start having contact with Jeff again? Was
2 it after all of this happened? Was it when he came back to town?

3 A We just started having contact, like, when my
4 grandmother took sick, about thirteen years ago when she got real
5 sick. So we all start meeting each other and coming back 'cause
6 she, she died about thirteen years ago. So we all began,
7 everybody began to associate with each other again.

8 Q Did Jeff ever, in your presence, ever act disrespectful
9 to you, your mother, his mother or anyone? Did he ever act
10 disrespectful or rude to anyone?

11 A No. No.

12 Q How, how would you describe Jeff so the ladies and
13 gentlemen of the jury will know the kind of person that you saw
14 him to be as he was growing up?

15 A He was like a normal child, you know. Just like
16 caring. He loved his mother. He love all of us, all of us. We
17 was just, all of us just grewed up together like a big family,
18 you know. We come from a big family so we always have
19 Thanksgiving, 4th of July and all of us just, we just grewed up
20 together. He was just a nice person.

21 Q Charlotte, you know that Jeff has now been convicted of
22 the offense of murder and he's been convicted by this jury and
23 the jury now has to decide what's the appropriate punishment for
24 Jeff. You understand that?

25 A Yes.

1 Q And you weren't allowed to sit in the courtroom during
2 the trial because you were going to be a witness; isn't that
3 correct?

4 A Yes.

5 Q But you've been told what he was convicted of and that
6 now he's facing either life imprisonment or a death sentence. Do
7 you understand that?

8 A Yes, sir.

9 Q Is there anything that you can say, anything you want
10 to say to these jurors that might help them make the decision
11 that they should make with regard to whether your cousin is going
12 to be sentenced to death or that he's going to be sentenced to
13 spend the rest of his life in prison? Would you like to say
14 anything to them?

15 A Yes. I'm just asking ya'll -- I know ya'll made your
16 choice. And I'm asking you to please just forgive. And I know
17 he's going through a lots now. And we, we grieved for the person
18 that died. We did. We wanted to go see the people. I'm just
19 asking ya'll to spare his life and just forgive, just please
20 forgive him and give him another chance. That's all I just ask.
21 God be with all of ya'll.

22 MR. MEARS: Thank you, Charlotte.

23 Your witness.

24 THE COURT: Mr. Hardy, do you have any questions?

25 CROSS EXAMINATION

1 BY MR. HARDY:

2 Q Basically, Mr. Cromartie lived in Florida and
3 Pennsylvania during his formative years and away from you?

4 A Yes, sir.

5 Q You really had -- didn't have a lot of contact with
6 him, what he did or didn't do, during those years?

7 A Well, he came home. He come home. Like I said, we had
8 get togethers.

9 Q Maybe several times a year, once or twice a year? You
10 said Thanksgiving, 4th of July or funerals, that kind of thing?

11 A Yes.

12 Q And you live in Boston, I think, now?

13 A Um-hum (affirmative).

14 Q You don't live in Thomasville. You live in Boston?

15 A I'm from Thomasville but I stay in Boston.

16 Q You've been living in Boston, I think, in a trailer
17 over there a number of years; haven't you? Up there on that main
18 street?

19 A Sir?

20 Q You live in Boston right now; don't you?

21 A Um-hum (affirmative).

22 Q With your family?

23 A Yes, sir.

24 Q But he was away from your grandmama or the lady that
25 just testified and you and he was with, growing up in

1 Pennsylvania and Florida?

2 A Yes.

3 MR. MEARS: Nothing further.

4 THE COURT: You may step down.

5 MR. MEARS: Call Anthony Cromartie.

6 THE COURT: If you would raise your right hand, please,
7 sir?

8 Do you solemnly swear that the evidence you'll be
9 giving this Court and this jury in the matter now pending
10 before this Court shall be the truth, the whole truth and
11 nothing but the truth, so help you God?

12 MR. CROMARTIE: Yes, sir.

13 THE COURT: Thank you, sir.

14 ANTHONY JAMES CROMARTIE

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MEARS:

18 Q Anthony, would you please tell the ladies and gentlemen
19 of this jury your full name, your occupation and where you're
20 living right now?

21 A My name is Anthony James Cromartie. I reside in
22 Atlanta, Georgia. My occupation, I'm a mail handler for the
23 U. S. Post Office. Been there four years.

24 Q And what is your age, Anthony?

25 A I am thirty-four.

1 Q Are you Jeff's older brother?

2 A Yes; I am.

3 Q Okay. And where were you born?

4 A I was born in Thomasville, Georgia, 1963.

5 Q And who is your mother?

6 A Estelle Barreau is my mother.

7 Q Okay. And is this your grandmother out here?

8 A Yes; she is.

9 Q Ms. Angeline?

10 A Yes; she is.

11 Q Now, so that the ladies and gentlemen of the jury will
12 know a little bit more about Jeff, would you please tell them a
13 little bit about where you and Jeff lived with your mother after
14 you moved from Thomasville?

15 A We --

16 Q Just, just tell them.

17 A We resided -- We left Thomasville and went to Ohio
18 where my mom was working there. We stayed there approximately,
19 between four and five years. From that time on we moved to
20 Pennsylvania. And when my mom got married we moved to
21 Pennsylvania.

22 Q And from Pennsylvania where did you move?

23 A From Pennsylvania we moved to Texas.

24 Q What part of Texas? Where in Texas?

25 A It's called Baytown, Texas. It's twenty-three miles

1 outside of Houston.

2 Q Was there a time when you moved from Texas back to,
3 back to Pennsylvania or Ohio?

4 A Well, at that time I left from Texas and joined the
5 Army, so at that time my mom moved from Texas, she moved to
6 Florida. And from that time, that's where I knew she occupied,
7 there in Florida while, while I was in the Army. Then from there
8 she went, moved back to Atlanta.

9 Q Now, tell the jury, ladies and gentlemen of the jury, a
10 little bit about what your life was like growing up with just you
11 and Jeff and your mother?

12 A We was like the three Amigos, one without the other.
13 We don't go nowhere without one. We had a good childhood with my
14 mother. Sometimes it got rough, you know, but that's --
15 sometimes that's the way life is sometimes though. But we have a
16 loving family, just, it was just the three of us. We had our
17 rough moments in life, but you know, you adapt to them and keep
18 going on.

19 Q When you say you as a family had some rough moments.
20 Be a little bit more specific? What are you talking about?
21 Financial problems, family problems? How, what kind of roughness
22 did you have in your life?

23 A Well, there was a point in time where there was
24 financial problems, you know, but, and there was all, also a
25 rough childhood. My mom was married and her husband at the time

1 was abusive to the point with me and my mother and sometimes Ray.
2 That's one time we had to stick together and, and go on with the
3 situation and stuff, you know, and, you know, and deal with it.
4 Sometimes it was rough but we still -- whatever happened it was
5 just still the three of us, you know, mother and her two sons.

6 Q Did your mother have some bad relationships with some
7 of the men in her life as you were growing up?

8 A Yes. Most of the men in my mom's life usually were --
9 two I know of was very abusive, you know, to the point to where
10 it was, it was hard on me, my mom, my brother. And, it's hard to
11 talk about because it's a part of my life I want to put, put
12 behind me, but I know it's still there. But to the point to
13 where, I mean, when I mean abusive, I don't mean just pushing and
14 shoving. I mean to the point to where it was physical abuse with
15 my mother. And the only person I really had to stick by and deal
16 with the situation was me and my brother.

17 Q Anthony, you and your brother were close growing up; is
18 that correct?

19 A Close growing up, close now. There'll never be a
20 distance between me and my brother. We always be close.

21 Q You had a younger brother that was killed in a fire;
22 did you not?

23 A Yes.

24 Q How old were you when that fire took place?

25 A Six years old.

1 Q Have you any present, real memory of that fire?

2 A I don't have presence of the fire, but I have presence
3 of when my cousin Charlotte Johnson came and got me out of
4 school. But she never told me what happened, just told me I had
5 to go home. When I walk home and seeing our house burnt down,
6 you know, I didn't know what was going on. I was told a day
7 later I lost a brother. He died in a fire accident. And from
8 that moment on, you know, the only thing I can remember then is
9 going to his funeral.

10 Q Anthony, after the death of Buddy, your infant brother,
11 did you and your mother and Anthony start moving around a lot?

12 A Well, my mom was in the hospital at the time my brother
13 died, so we went to stay with our grandmother. That was a rough
14 part in my mom's life at that time because my mom lost a son.
15 She never got to see his face again. She didn't even go to his
16 funeral, you know. She couldn't take it, you know. She lost one
17 son. That's just like any other mother. What would it be like
18 if you lose a son. So, you know, we moved with our grandmother
19 and stayed with our grandmother for about two or three years,
20 probably longer, until we got back with our mother, when she
21 could, you know, wear out some of this pain that she was going
22 through, to handle me and my brother.

23 Q Did your mother go through some hard times as a result
24 of her emotional state dealing with this?

25 A Real hard times. It's -- I know of four or five years

1 after that that was real rough. Like dealing with, dealing with
2 the fact she lost a son, dealing with the fact she never looked
3 at his face again, dealing with the fact that, you know, it was
4 three of us, and now one of us is gone, you know.

5 Q Let me ask you a question about, again about some of
6 the relationships that your mother had with men during these
7 part, this phase of her life, your life and Jeff's life. Did --
8 As a result of these relationships, did your mother have
9 financial trouble?

10 A Yes; we did. I mean, financial problems to where, some
11 of the places where we was staying we wasn't able to pay the rent
12 so we had to move somewhere else that was a little cheaper.
13 Sometimes it got so rough to where we had to ask for support from
14 our church to even help us. But my mom never gave up though, you
15 know. She never stopped loving us. Whatever it took, whatever
16 hell she had to go through to support her two sons, she went
17 through it.

18 Q Was there -- In these relationships that your mother
19 had, was there any real positive role models for you and Jeff?

20 A It wasn't in the relationships there wasn't no positive
21 role models at all, at all. The relationships she was in was
22 abusive. I mean, what, what role model can you see coming from
23 to where a man has to hit a woman or even hit children to get his
24 point across. That's no positive role model there. The only
25 positive role model that we had was usually my mom's best

1 friend's husband or neighbors that we knew that was men that was
2 real positive to me and my brother. But being in a relationship,
3 there was none positive. It was mostly abusive. That's what we,
4 we went through life and stuff, but it wasn't that -- because
5 that happened that, you know, things happen in our life. They're
6 just turning points, you know.

7 Q Did Joe Lundy, Mr. Joe Lundy have any part of your life
8 at any particular time --

9 A Yes.

10 Q -- of your life and Jeff's life?

11 A He had, he just had a bigger part of my life just as
12 much as he has Ray.

13 Q Tell the ladies and gentlemen of the jury who Joe Lundy
14 was and what part that he played in your life and Jeff's life?

15 A Okay. I didn't know Joe, Joe Lundy until my older part
16 of life. Joe Lundy was my mom's -- they was real, real close.
17 But he was real positive to Jeff and I. Jeff's, I mean, Ray -- I
18 mean, Joe Lundy's mother is like a grandmother to us and she was
19 always there for us. Even Joe Lundy was like, like a father to
20 us. But with Ray, he was real close with Ray. Him and Ray has a
21 real close bond. They always did. I mean, I was never to the
22 point to where I was never jealous of them, but I just see that
23 it was, the bond was there between them, like a father and son.
24 And the bond is there to this day.

25 Q Do you know why Joe, Joe Lundy had this relationship

1 with ya'll and why he had a special relationship with Jeff?

2 A Well, I don't know how true it is, but Joe Lundy was
3 supposed to have been Ray's father. And that's what was heard,
4 so it was never determined if it was or was not. So, as Joe
5 looked at it as Ray being his first and only child, you know, and
6 the bond just grew from there.

7 Q Did, did Jeff ever, even to this day, has he ever known
8 who his father was for real, for, you know, positively know who
9 his father was?

10 A Well, it was told to him that Charlie Cromartie is his
11 son and always will -- I mean, his father and always will be his
12 father. But as coming up, you know, with all this confusion in
13 our family it was never determined, you know, positive who his
14 father was. My mother told him that -- Ray was to the point to
15 where he had to find out himself, you know, because sometimes you
16 tell someone that, it still leaves an open door for them. They
17 have to find out for themselves what life's all about.

18 Q Now, Anthony, you're here. You haven't been able to
19 sit in part of the trial because as a witness you had to stay
20 outside during the trial; is that correct?

21 A Right.

22 Q Now, but you know that Jeff has now been convicted of
23 the offense of Murder.

24 A Right.

25 Q You understand that?

1 A Yes.

2 Q And you understand that we're not here to argue with
3 that particular verdict, but to try to help the ladies and
4 gentlemen of this jury in the decision that they have to make as
5 to what's the appropriate punishment? You understand that?

6 A I understand that.

7 Q Now, the ladies and gentlemen of the jury are looking
8 at you and you've living in Atlanta, you're employed at the
9 postal service. Why couldn't Jeff have had the same life that
10 you've had? Do you have any, any explanation for that?

11 A We're all, we're all different. We seek different
12 paths in life, you know. Ray sought his path in life. I sought
13 my path in life. You know, he's, he chose to do things that he
14 wants to do. It's -- The opportunity was there but whenever he
15 was ready to accept that opportunity, it was there for him.
16 Because we seek separate paths, I mean, you know, the opportunity
17 wasn't there for him.

18 Q Did you and Jeff go to the same schools together?

19 A Yes; we did. Went to the same high school.

20 Q Did ya'll play football together?

21 A And when we was little we played football together.

22 Q Did you ever play on the same team with him?

23 A Yes.

24 Q Is there anything that stands out in your mind about
25 your little brother?

1 A Yes.

2 Q It may not mean anything to anyone to you, but please
3 share it with the jury?

4 A Well, we was small the first time we ever played
5 football, what we call the peewee league or whatever when we was
6 young. As a matter of fact, our first game or second, I
7 remember, my brother played on my team for that day 'cause we was
8 short of people. And I, I played with somewhat -- got to know
9 something about football, running back. And when they kicked the
10 ball off to me, I received the ball. I was running upfield. My
11 brother gave one of the blocks to help me score my first
12 touchdown. I mean, that stands out in my life because that's the
13 first time we're together and really did something together.

14 Q Now, throwing blocks in football games are not that big
15 a thing in most people's lives. What does that say to you about
16 your continued love for your brother?

17 A Whatever it takes, or whatever snares come in life, my
18 brother willing to give his own just, or I, myself, so we can
19 make it. I mean, it's just, it's the bond that's been since we
20 was younger. It's never left.

21 Q Now, you understand, Anthony, that the only choices
22 this jury is going to have is either to sentence Jeff to death or
23 to put him in prison for life without parole or life? You
24 understand that's the only choices they have?

25 A I understand that, you know.

1 Q If the jury spares his life, are you going to continue
2 to be there for him even though he's spending the rest of his
3 life in prison?

4 A I want to say one thing. I don't care where my brother
5 go. I'm there for him. As the old saying goes, you can go to
6 hell and back. I'm still here. The situation now, you know, I'm
7 still here for my brother. That's the love we have. Because the
8 situation arise, I'm not supposed to turn my back on him. I
9 mean, it's just a hand I'm gonna have to deal with, but I, I'm
10 gonna still love my brother regardless.

11 Q If your brother is sentenced to death by this jury, you
12 know he'll be, he'll be executed. What effect would that have on
13 your life and the lives of your family?

14 A It'd have a big effect. We've lost a loved one. He
15 have family that he's close to. I have a daughter that's twelve.
16 That's her Uncle Jeff. She hasn't seen him since this incident
17 going on. She asked to see him all the time, you know, want to
18 be with him. I lose another brother and I don't want that to
19 happen.

20 Q Is there anything that you want to say to this jury
21 before you leave the stand that might let them know how you feel
22 about your brother that you haven't already said, and are you
23 asking this jury to spare your brother's life?

24 A Yes; I'm asking you to spare his life. But I'm also
25 saying that when you have someone that, that you love and you

1 take him away, the pain continues on and on. It doesn't stop. I
2 love my brother to death. My family do too. That's why we're
3 here to support him. It's the love that's there. I don't want
4 nothing to happen to my brother, never.

5 MR. MEARS: Thank you, Anthony. Your witness.

6 CROSS EXAMINATION

7 BY MR. HARDY:

8 Q Mr. Cromartie, I think a minute ago you said that
9 people can choose the paths in life they want to go?

10 A Right.

11 Q Some people choose one path and some people choose
12 another path?

13 A Right.

14 Q And you choose, you've chosen the positive path?

15 A Yes.

16 Q And you said that your brother, the opportunity was
17 there for your brother? Is that what you just said, just like it
18 was for you?

19 A What I mean by that is that the opportunity for him to
20 do anything in life, period, you know. Not to say if it's good
21 or bad. That's for everyone.

22 Q The opportunity was there?

23 A To do whatever you want to.

24 Q You were in the Army and now you work for the post
25 office?

1 A Yes.

2 Q And you chose that path?

3 A Yes.

4 MR. MEARS: Nothing further, Your Honor.

5 Please step down.

6 THE COURT: You may step down.

7 MR. MEARS: Your Honor, at this time we'd like to be
8 able to put the videotape player before the jury in order
9 to present the videotape of Mr. Lundy's statement.

10 THE COURT: All right, sir.

11 Ladies and gentlemen, while the attorneys are setting
12 up the equipment for the videotape deposition of Mr.
13 Lundy, let me inform you that this testimony is to be
14 received by you just as if Mr. Lundy was here in court
15 live and in person testifying before you. The attorneys
16 in this case are required to be prepared for both phases
17 of this case prior to the beginning of the trial in this
18 particular matter. Of course, they had no way of knowing
19 prior to the trial what your verdict would be in regards to
20 the charge of Murder. Therefore, it was their
21 responsibility to be prepared for the sentencing phase if,
22 in fact, this case were to reach the sentencing phase.

23 I charge you that you should not place any inference
24 whatsoever on the fact that the video was made prior to the
25 actual trial of the guilt-innocence phase of this

1 particular case.

2 You're instructed to hear and receive Mr. Lundy's
3 testimony in accordance with the prior instructions that I
4 have given you in regards to credibility of witnesses and
5 it's your determination and your decision as to what weight
6 to give to the testimony of any witness.

7 Mr. Mears?

8 (The following is the videotaped deposition of Mr.
9 Joseph Ralph Lundy)

10 "MR. MEARS: Would you raise your right hand, please.

11 Do you solemnly swear that the testimony you're about
12 to give in the matter" --

13 THE COURT: Ladies and gentlemen, can everyone see?

14 "MR. MEARS: Would you raise your right hand, please.

15 Do you solemnly swear that the testimony you're about
16 to give in the matter of the State of Georgia versus
17 Jefferson Ray Cromartie will the whole truth and nothing but
18 the truth, so help you God?

19 MR. LUNDY: I do.

20 JOSEPH RALPH LUNDY, SR.

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MEARS:

24 Q Mr. Lundy, if you will speak directly into that
25 microphone so that your voice can be picked up. Can you tell the

1 ladies and gentlemen of the jury what your name is and where you
2 live?

3 A My name is Joseph Ralph Lundy, Sr. I live at 208 W.
4 Jerger Street here in Thomasville, Georgia.

5 Q Mr. Lundy, how long have you lived in Thomasville?

6 A Except for a couple of years in Miami and stints, two
7 stints in the military, all of my life.

8 Q When you were in the military, what branch did you
9 serve in and what was the nature of your service in the military?

10 A I was a military police. I served in the Army as a
11 military police. And my main duties was to, in certain areas
12 was, when I was in Vietnam it was primarily convoys and post,
13 post patrol and once I got back stateside it was primarily post
14 patrol and town control in conjunction with the civilian
15 authorities.

16 Q Okay. Mr. Lundy, I'm going to ask you to speak up just
17 a little bit. I'm having trouble hearing you back here, so I
18 want to make sure that everyone on the jury can hear you. Okay?

19 A All right, sir.

20 Q Now, Mr. Lundy, you've recently, in the last year, been
21 diagnosed of having cancer; is that correct?

22 A Yes, sir.

23 Q Just so the jurors can understand a little bit about
24 your treatment, what kind of medicine are you on, are you taking
25 right now?

1 A I'm taking Tagamet for my -- I don't have a stomach so.
2 I take it for my pouch. I'm taking Ativan, Vistaril, Compazine,
3 Ibuprofen 800, Chromagin. That's a vitamin, in the morning time.
4 I take another vitamin in the evening time. Restoril for sleep.
5 Excuse me.

6 Q That's okay. I just wanted the jurors to understand in
7 case you have to stop during the middle of this taping, you're on
8 quite a bit of medication right now; is that correct?

9 A Right. Yes, sir.

10 Q Now, Mr. Lundy, is, is your cancer in remission right
11 now?

12 A Yes, sir. It went in remission in May of last year.

13 Q You understand that we're taking this deposition by
14 videotape in the event your condition worsens and you're not
15 available to testify before these jurors at the trial. You
16 understand that; is that correct?

17 A Yes, sir.

18 Q Now, Mr. Lundy, will you tell the ladies and gentlemen
19 of the jury whether or not you know Jefferson Ray Cromartie?

20 A Yes; I do.

21 Q And how do you know him and in what capacity have you
22 known him?

23 A In -- I'm, I'm his dad in his mind and he's my son in
24 my mind. We belong to each other.

25 Q Would you explain that a little bit to the jurors? Did

1 you know Jeff's mother?

2 A Yes; I did.

3 Q And would you just tell a little bit about how you came
4 to know her and your, your background relationship with Jeff and
5 his mother?

6 A Well, I've always known his -- I went to school with a
7 couple of his uncles. We were all in the same grade. And it was
8 a time growing up and it was all in the '60s and it was a time
9 when we, everybody sort of socialized. No commitments or
10 anything like that, just socialization.

11 Q When you came back from Vietnam, you were over there
12 two times; is that correct?

13 A Correct.

14 Q When you came back from Vietnam the, the second time,
15 what kind of work did you get involved in?

16 A Okay. I was still in the military when I came back.

17 Q Okay. After you got out of the military I should, I
18 should say.

19 A Oh. Well, when I got out of the military my dad had a
20 logging and pulpwood business and so I did that for a time, a
21 little while, not long. And I started driving a truck. And I
22 did that for a little while, I guess about a year. And then I
23 went to nursing school. And while I was in nursing school, then
24 I went to EMT school. And then when I came out of nursing school
25 I went to work for Dr. Fred Murphy, Jr., who -- he is deceased at

1 this time, and I worked for him about six or seven years as his
2 assistant.

3 Q And are you able to do any kind of work right now?

4 A No, sir.

5 Q Okay. Now, during the period of time that you knew
6 Jeff's mother, was that here in Thomasville?

7 A Yes, sir.

8 Q Okay. Tell the ladies and gentlemen of the jury a
9 little bit about your family and Jeff's relationship to the rest
10 of your family, particularly your mama?

11 A Well, my mama, that was her -- Jeff was her heart. He
12 called her Big Mama. And I can remember, like on a lot of
13 occasions when they were getting ready to buy boots, 'cause they
14 had to have special boots that were snake proof and had a steel
15 toe and a whole bunch of other stuff, and, of course, Jeff had to
16 have his too. And so he went in and he got outfitted for his.
17 And so they told him, okay, you're the big boss, you know.

18 Q Is that back when the family was in the logging
19 business?

20 A Right.

21 Q And about how old was Jeff at that time?

22 A Probably four, five, something like that.

23 Q And he had to have the same clothes as the rest of
24 them?

25 A Right.

1 Q Okay. How did he get along with, with your mama, the
2 lady he called Big Mama?

3 A Oh, they -- She loved him. He loved her.

4 Q Is she still in life, Mr. Lundy?

5 A No, sir. She died in '87.

6 Q Have you had occasion in the last several years to see
7 and talk with Jeff?

8 A Yes, sir.

9 Q Okay. You understand that this testimony is being
10 given in anticipation, in the event that he is convicted of the
11 offense of murder? You understand that?

12 A Yes, sir.

13 Q And if you're testifying and this is being presented to
14 a jury, it will be because a jury has already found him guilty of
15 the offense of murder? You understand that?

16 A Yes, sir.

17 Q And that this jury is having to consider what type of
18 sentence he's supposed to receive, either death in the electric
19 chair or life in prison?

20 A Yes, sir.

21 Q You understand that?

22 A Yes, sir.

23 Q Would you tell the jurors a little bit about who you
24 think Jeff Cromartie is, the type of person he is?

25 A Well, even at a young age I never had problems with

1 him. Sometimes we might not agree on a point of view, especially
2 after he got grown. But we would -- you know, he'd say, well, I
3 don't agree with that. And I'd say, well, this is why. And, you
4 know, we'd go through it, through things like that. But I guess
5 one of the things that I was most impressed with about him, I
6 remember one day I was in the back yard and I was raking yards,
7 and he came up to the rake, took the rake out of my hand,
8 finished the yards, got the mower out, and I didn't ask him to do
9 it and he didn't have to do it. He got the mower out and went up
10 and mowed the yards, cut the hedges, messed them up, but that was
11 okay. At least he tried.

12 And he and I have -- we didn't have a, a stormy
13 relationship. It was one, I think, where we were really trying
14 to feel one another out and get a feel for each other. The likes
15 and dislikes and what to expect, the thinking processes and that
16 sort of thing.

17 Q During those times that you had a chance to be with
18 Jeff and he would work in the yard and work around you, did you
19 try and point him in the right direction and show him how he
20 should be going with his life?

21 A Yes, sir. That was ninety percent of the conversation,
22 because I felt like, I felt that if my -- if our strength is in
23 our youth, then our knowledge must be with our older people and
24 it's up to the older people to direct the strength of the youth.
25 And sometimes we can get through, sometimes not. But that's what

1 we, that's what --

2 Q Did there come a time when Jeff moved away from
3 Thomasville and was away and outside of your control or outside
4 of your ability to give him direction?

5 A Yes, sir.

6 Q And where did he go? Do you, do you remember?

7 A I believe he went to Boston and then back over to
8 Cherokee, but I'm not really sure.

9 Q He was with his mother; is that -- would that be
10 correct to say?

11 A Well, most, most of the time he was with her, but this
12 was after he had gotten, you know, past, well, twenty-one; right.

13 Q When you look at Ray, Jeff Ray Cromartie, when you look
14 at him, do you see a son?

15 A Yes; I do.

16 Q Do you have other children?

17 A Yes; I do.

18 Q Tell the jurors, ladies and gentlemen of the jury about
19 your other children?

20 A Quita, that's the oldest daughter. She and Jeff are
21 the closer of the two. Latonya and Fentrice and Joseph is my
22 baby. Well, Thad and Joseph.

23 Q Do you treat Jeff any different than any of your
24 children?

25 A Put them in a bag and they can fall out together.

1 Q And that's the way your, that's the way your mama
2 treated him; wasn't it?

3 A Right.

4 Q If this sentence -- this jury were to sentence Jeff to
5 death, you'd be losing a son; wouldn't you?

6 A Yes, sir; I would.

7 Q Has Jeff" --

8 MR. MEARS: Your Honor, may we stop it? May we
9 approach the Bench, please, sir?

10 THE COURT: Yes, sir.

11 (Whereupon Counsel confer with the Court at the Bench,
12 during which the following transpired)

13 MR. MEARS: Judge, I don't know whether or not I used
14 the word electrocution during this. I don't think I used
15 it. I don't want the Court to think I used it -- this was
16 done before the Court's ruling. And the reason I stopped
17 it, I'm not sure whether I used it again during the
18 questioning. I don't know of any curative corrective at
19 this point. But I wanted the Court to know it was, it's not
20 something I did. I had forgotten I even used it in that.
21 And I apologize to the Court for it coming in because I know
22 what the ruling has been. I just don't know any other way
23 to cure it at this point.

24 THE COURT: Run the tape.

25 MR. MEARS: Excuse me?

1 THE COURT: Run the tape.

2 (Conclusion of Bench conference)

3 MR. BRYANT: May we resume, Your Honor?

4 THE COURT: Yes, sir.

5 (Whereupon the videotape is continued to be
6 played as follows)

7 "BY MR. MEARS:

8 Q -- you since you got diagnosed with cancer?

9 A Yes, sir; he has.

10 Q Did, did he write you a letter upon --

11 A Yes; he did.

12 Q -- learning that? Do you have that letter with you?

13 A Yes, sir.

14 Q Can I -- When did you receive that letter? Do you
15 recall?

16 A In January of '60 -- not '60. January of '96, I
17 believe it was.

18 Q January of '96. Would you mind just reading that
19 letter so that the ladies and gentlemen of the jury can hear what
20 your son had to say to you when he learned that you had cancer?

21 A No, sir. I'm don't mind. 'Dear Pops. I just heard
22 about you today and I'm sending you my deepest regrets to you. I
23 wish the best on, on your recovery. I never meant any harm to
24 you. Things happen in life that we have no answers for, but
25 everything happen for a reason. My only wish is that I wish we

1 had a better relationship with each other and respect each
2 other's views of life. So we are both going through something
3 right now to better our faith in life. I know I will make it
4 through these trials and you have got to have the same attitude
5 about this cancer. So get well so we can spend some time
6 together. Okay? Love always, Jeff'.

7 Q Mr. Lundy, did it give you comfort in your time of
8 sickness to know that your son was thinking about you?

9 A Yes, sir; it did.

10 Q Do you love your son?

11 A Sure do.

12 Q Do you have anything you want to ask these jurors now
13 that they've got to make a decision as to whether your son lives
14 or dies?

15 A I would hope -- when I -- I would hope that they would
16 spare his life because I, out of some tragedy some good can come
17 from it. Maybe he can help counsel some of the younger prisoners
18 who won't be there because if his life is spared he's going to
19 spend the rest of it in, in prison. And maybe he can help those
20 coming through and his, his own experiences and, and point them
21 in the right direction, so maybe some of them won't come back or
22 won't fall into the same trap that he did. But we'll be
23 supportive of him in his time of weakness and we would hope that
24 he would be that same way at somebody else's time of weakness
25 because everybody coming through won't have the strength but I

1 feel like that's something that he could do and I feel like that
2 that was something that he would do.

3 Q And you understand, Mr. Lundy, that this, these ladies
4 and gentlemen of the jury, after hearing all the evidence in this
5 case, have, have convicted Jeff of the offense of armed robbery
6 and murder?

7 A Right.

8 Q You understand that; don't you?

9 A Yes, sir.

10 Q And you understand that he's been found guilty of
11 taking the life of another human being?

12 A Yes, sir.

13 Q You understand that?

14 A Yes, sir.

15 Q Are you still asking these jurors to spare his life?

16 A Yes, sir.

17 Q Can you give them a reason why they should spare his
18 life?

19 A Well, I think taking a life is wrong, but I just don't
20 believe in, in the death penalty. And I feel like if, if his
21 life is spared he won't be out there in society and he could
22 contribute to that next inmate who's coming in who maybe won't
23 have as much time as he does, you know, won't be in there for the
24 rest of his life, and he'll be able to maybe talk to that person
25 and turn them around.

1 Q Mr. Lundy, can you look this, look at this jury, even
2 though we're doing it by videotape, can you look at the ladies
3 and gentlemen of this jury and ask them to show mercy and to
4 spare your son's life?

5 A Yes, sir. As a parent I love him very deeply. And I
6 feel like that there could some good come out of this. And I
7 feel like he won't be a menace. He'll be in prison and working
8 toward helping somebody else because we'll support him, not
9 because we have to but because we love him and there is somebody.
10 As long as he know that there's somebody that care about him,
11 that should make him a stronger person to do his time and to help
12 somebody else along the way.

13 MR. MEARS: Thank you, Mr. Lundy.

14 CROSS EXAMINATION

15 BY MR. HARDY:

16 Q Good afternoon, Mr. Lundy.

17 A Good afternoon, sir.

18 Q How are you doing today?

19 A I might as well.

20 Q We had a good talk over at your house Wednesday?

21 A Wednesday -- Tuesday.

22 Q Had a good talk Tuesday; didn't we?

23 A Yes, sir.

24 Q I think we discussed things about life in general and
25 about our beliefs; did we not?

1 A Right.

2 Q And I think you told me about your children. You
3 didn't tell Mr. Mears that you've got, I think several children.
4 You love these -- You all love them equally; don't you?

5 A Right, sir.

6 Q And Jeff left you when he was fairly young; didn't he?

7 A Right.

8 Q How young was he when he left?

9 A Well, Jeff was never really, he never really stayed
10 with me. See, I only had one that really stayed with me.

11 Q Joseph?

12 A Joseph.

13 Q And Joseph and Thad --

14 A Right, sir.

15 Q -- they're the ones you mainly raised?

16 A Right, sir.

17 Q And you tried to steer them on the -- you have to talk
18 to them all the time because they're here with you basically all
19 their life?

20 A Right.

21 Q But Jeff didn't never live with ya'll?

22 A No, sir.

23 Q So you didn't get to give him the counseling that you
24 gave Joseph and Thad; did you?

25 A No, sir.

1 Q In fact, you believe in the old fashioned ways of the
2 father is supposed to tell his child what to do and guide his
3 child in being a good child?

4 A Right, sir.

5 Q You believe in right and wrong; don't you?

6 A Right, sir.

7 Q And you believe in paying for your penalties --

8 A Right.

9 Q -- for what you do in life?

10 A Right.

11 Q And I think you told me you were an MP in Vietnam?

12 A Right, sir.

13 Q And you think probably Agent Orange is what's caused
14 you this problem?

15 A Right, sir.

16 Q And you were a nurse, you said?

17 A Right.

18 Q And you've always worked for a living; hadn't you?

19 A I always have.

20 Q And your wife, Pearl, is here with you today?

21 A Yes, sir.

22 Q And Pearl, I think Thad's real close to her; isn't he?

23 A Yes, sir.

24 Q And as well as Joseph?

25 A Right, sir.

1 Q I think you also told me the other day that Jeff lived
2 mostly with either his mother in Florida or lived other places?

3 A Right, sir.

4 Q And he just came back in your life back in February of
5 '94?

6 A Right.

7 Q And you know that's because he had a death in the
8 family, is why he showed up?

9 A Right.

10 Q And you really didn't have any influence over him
11 during his formative years, when he was in high school and after
12 high school; did you?

13 A No, sir.

14 Q Didn't even know where he came from when he showed up
15 back in town in February?

16 A No.

17 Q So you really had no contact with him?

18 A No, sir.

19 Q So you really didn't try to teach him the ways of right
20 and wrong like you taught your other children; did you?

21 A Right; because --

22 Q You didn't have that chance; did you?

23 A I didn't have the chance; right.

24 Q In fact, you wish you had; don't you?

25 A I sure do.

1 Q In fact, you think you maybe could have made his life
2 better if you'd had the influence on him?

3 A Yes, sir.

4 Q I think you also told me the other day that, that you
5 don't understand why somebody should lose their life for twenty-
6 two beers; didn't you?

7 A Right, sir.

8 Q And, in fact, you didn't even -- that kind of floored
9 you the other day; didn't it? That's not right; is it?

10 A No, sir.

11 Q Did that man's life mean anything if it just meant
12 twenty-two beers, Mr. Lundy?

13 A No, sir.

14 Q You didn't know him; did you?

15 A No, sir.

16 Q You don't know his family; do you?

17 A No, sir.

18 Q Don't know what his family is going through or been
19 through; do you?

20 A No, sir.

21 Q That wasn't right either; was it?

22 A No, sir. You know, we used to -- I worked at
23 Southwestern and so we, a bunch of us would usually stop and get
24 those scratch-off tickets, you know, at the store and, you know,
25 sodas or something like that. That was prior to my leaving.

1 Q Yes, sir.

2 A I don't know if he was the same person or not, but, you
3 know, that was the extent of it.

4 Q He never was a bad person; was he?

5 A Not that I know of.

6 Q That letter that he wrote to you was back in January of
7 '96.

8 A Yes, sir.

9 Q Today is August the 28th of '97?

10 A Right, sir.

11 Q Has he written you any letters between January of '96
12 and today's date, August the 28th of '97?

13 A Yes, sir, but I -- my wife would have them.

14 Q You didn't bring those with you today?

15 A No, sir.

16 Q You feel sorry for the family of the victim; don't you?

17 A Yes, sir.

18 Q And you empathize with them; don't you?

19 A Yes, sir.

20 Q Has your son said that he was going to try to help some
21 other inmate straighten their lives out?

22 A Yes, sir; we talked about it.

23 Q You talked about that?

24 A Yes, sir.

25 Q When was that? This week or another time?

1 A At another time.

2 Q Counsel them in the ways of sin?

3 A And the way, you know -- the thing that -- Like I told
4 him, I said, even at this last visit that we had, I said, you
5 realize that if you don't get the death penalty that you'll be in
6 jail for a long time. And I will support you in your time of
7 weakness. Will you be there for somebody else? And he said,
8 told me, yes, he would.

9 Q You expect your children's support because you're a
10 strong father; aren't you?

11 A Yes, sir.

12 Q And you love your family?

13 A Right, sir.

14 Q But you could understand that Mr. Slysz's family also
15 had their --

16 A Right, sir.

17 Q It's not right to kill innocent people; is it?

18 A No, sir.

19 Q And you're a law abiding, honest, good man?

20 A I sure try to be.

21 Q You've worked all your life; hadn't you?

22 A Yes, sir.

23 Q And you're forty -- Excuse me. Fifty-five years old?

24 A Fifty-five in October.

25 Q Yes, sir. And you didn't never expect anything like

1 this to come out of one of your sons; did you?

2 A No, sir. When this happened, I mean, it was something
3 I had to really wrestle with. I had to really wrestle. I
4 couldn't have been more devastated.

5 Q You don't think your children should kill people; do
6 you?

7 A No, sir.

8 Q Nor shoot people in the head?

9 A No, sir.

10 Q That's -- from your training in the military, that's
11 about as bad as it can get; isn't it?

12 A Well, that's more from my upbringing from my mama.

13 Q Sir?

14 A More from the upbringing of my mama.

15 Q Just to shoot an innocent stranger?

16 A You know, she just didn't believe in that.

17 Q You don't either; do you?

18 A No, sir.

19 Q Innocent strangers being killed by people for virtually
20 nothing, for no reason.

21 A Right.

22 Q You want them to spare his life but he didn't show the
23 same mercy to the victim; did he?

24 A Evidently not, if he's convicted at this stage.

25 Q That's pretty bad; isn't it?

1 A Yes, sir.

2 Q I think it'd be just about every -- most mothers and
3 fathers would ask the same thing you're asking though; wouldn't
4 they, Mr. Lundy?

5 A Yes, sir.

6 Q And you'd expect them to; wouldn't you?

7 A Yes, sir.

8 Q But you could understand Mr. Slyszy's predicament. He's
9 dead and he had no chance; did he?

10 A Right, sir.

11 Q He can't beg for mercy; can he?

12 A No, sir.

13 Q That's not good either; is it?

14 A No, sir.

15 Q Wish you the best and hope for recovery for you. Okay?

16 A All right, sir.

17 Q Thank you for talking to me. All right?

18 A Thank you, sir.

19 MR. MEARS: Mr. Lundy, thank you for being here today.

20 Thank you for submitting to this videotaped interview.

21 And, like Mr. Hardy, we all pray for your recovery from
22 this cancer.

23 MR. LUNDY: Thank you, sir.

24 MR. MEARS: We have nothing further."

25 (Conclusion of videotaped deposition)

1 THE COURT: Ladies and gentlemen, does anyone need
2 a brief recess at this point? You need a brief recess,
3 Ms. Leaks?

4 Ladies and gentlemen, why don't we take about a
5 five to ten minute recess. We'll give each of you an
6 opportunity to use the restroom or any other facilities
7 that you need to prior to resuming this particular matter.

8 Everyone remain seated while the jury retires.

9 (Whereupon the jury retires from the courtroom,
10 after which the following transpired)

11 THE COURT: We'll take about a ten minute recess.

12 (Whereupon the Court takes a brief recess, and upon
13 reconvening the following transpired in the jury's
14 presence)

15 THE COURT: Mr. Mears, you may call your next witness.

16 MR. MEARS: Call Ms. Estelle Cromartie Barreau, please.

17 THE COURT: Ms. Cromartie, if you would have a seat
18 right here, please, ma'am.

19 Would you please raise your right hand?

20 Do you swear or affirm that the evidence you'll be
21 giving this Court and this jury in the matter now pending
22 before this Court shall be the truth, the whole truth and
23 nothing but the truth, so help you God?

24 MS. BARREAU: I do.

25 THE COURT: Thank you, ma'am.

1 Mr. Mears?

2 LOTTIE ESTELLE BARREAU

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MEARS:

6 Q Ms. Barreau, would you please -- Pull that microphone
7 up, if you will, so that the jurors can hear you.

8 And tell the ladies and the gentlemen of this jury your full
9 name and your current address?

10 A My full name is Lottie Estelle Barreau. My current
11 address is 1361 W. Second Street, Riviera Beach, Florida.

12 Q Pull the mike on up just a little bit closer. There
13 you go.

14 Do you mind if I call you Estelle?

15 A That's what everybody goes by.

16 Q Okay. Estelle, are you the mother of Ray Jefferson
17 Cromartie?

18 A Yes; I am.

19 Q Tell the ladies and gentlemen of this jury where you're
20 from, where you were born, just a little bit about who you are?

21 A I was born right here in Thomasville in 1946. And I
22 grew up here in Thomasville. I worked here in Thomasville. I
23 left here when I was twenty-five years old.

24 Q And how old were you when your first child was born?

25 A I was eighteen.

1 Q And who was your first child?

2 A Anthony Cromartie.

3 Q And Anthony testified here earlier today; didn't he?

4 A Yes; he's here.

5 Q And who is your second child?

6 A Charlie Cromartie, Jr., which I lost in 1969.

7 Q And your third child?

8 A Is Ray.

9 Q Okay.

10 MR. MEARS: Your Honor, may I just set these up
11 here?

12 THE COURT: Yes, sir.

13 BY MR. MEARS:

14 Q Estelle, who was your first husband?

15 A My first husband was Charlie Cromartie.

16 Q Now, when was Ray born and where was he born?

17 A Ray was born in 1968 on Patten Street, Patten Street.

18 Q He wasn't born in the hospital; was he?

19 A No. I wasn't going to the hospital.

20 Q Was he helped, was the birth helped by a midwife?

21 A Yes.

22 Q Okay. Estelle, I'm just going to show you, so we'll
23 have this in the record, Defendant's Exhibit 21. It's Ray
24 Jefferson Cromartie's birth certificate; is it not?

25 A Yes.

1 Q Just look at that just briefly. Does that accurately
2 reflect the times and dates and place of Jeff's birth?

3 A Yes.

4 Q Now, where did you go to high school?

5 A Right here in Thomasville. I, I didn't finish but I
6 went here.

7 Q Okay. Did you drop out of high school as a result of
8 getting married and having your first child?

9 A Yes.

10 Q Okay. Where did you work when you were first, when you
11 first gave birth to Anthony? What kind of work did you do?

12 A I worked on the plantation when I got married. I
13 worked on the plantation with my mother-in-law for a period of
14 time.

15 Q What planation was that?

16 A I've forgot.

17 Q What kind of work were you doing?

18 A Helping with her in the kitchen and in the house.

19 Q Now, you gave birth to three children; is that correct?

20 A Yes; I did.

21 Q Now, the ladies and gentlemen have already heard a
22 little bit about the tragic death of Buddy Cromartie, your son.
23 And I know it's painful, but as best you can just tell -- you
24 were, you were not present when the fire started; were you?

25 A No. I, I was very sick that year, the early part of

1 '69. I had had two previous operations, January and April. And
2 December I got -- November, I got sick and which they had to
3 take, rush me to the hospital. On December the 3rd they, I had
4 to have major surgery. They told me I couldn't have no more
5 children. And the next morning my child got burnt up at my
6 brother-in-law's.

7 Q What was your brother-in-law's name? Was it the
8 Ponder's?

9 A My mother?

10 Q What was the name of the family where your --

11 A Thomas. Lottie Thomas and Wesley Thomas.

12 Q Okay. And this was on W. Jackson Street?

13 A 725 W. Jackson Street.

14 Q Was there any adult available to take care of the
15 children while they were there during the day?

16 A My sister was there. She -- Everybody had gone to work
17 they say. And my sister was there and there was a wiring, bad
18 wiring and the fire was burning. It was in the ceiling. And
19 when they left to go to work they said it was fed by the air or
20 the moisture. And my sister stayed -- my son Jeffrey and her
21 oldest son -- oldest daughter Tracy, my sister was working at
22 night. And they said, told her there was a fire and she thought
23 they was just talking about the heater in the house fire. But
24 then they say, Jeff said Tracy burn. And my sister woke up and
25 she took those two kids out the back door. And our house had two

1 doors that enter. And my sister went around. At that time her
2 daughter, baby daughter, Lisa, the ceiling had fell on her head
3 where the fire was burning her. She grabbed her. But they
4 couldn't find Buddy. And Buddy had crawled up under the bed. He
5 died of suffocation of fire, you know. But they said he would
6 have been scarred for life if he'd of been alive, if he had
7 lived.

8 Q You weren't present at the funeral?

9 A No. They -- I had a, had a nervous -- my nerves
10 broke while I was in the hospital with my son.

11 Q Just to refresh your memory, and I know it's painful
12 but I want you, to ask you to look at this. This is Defendant's
13 Exhibit 20. It's from the Thomasville Times Enterprise.

14 A Um-hum (affirmative).

15 Q Is that the article that appeared about the death of
16 your child?

17 A I think so. I don't remember.

18 Q As a result of that tragedy, did you have a breakdown?

19 A Yes; I did.

20 Q Who was left to take care of your two, other two
21 surviving sons?

22 A Well, when I come out of the hospital the doctor that
23 was there told my mama that they should take my two kids away
24 from me because of my nerves. Every time I'd look at the other
25 two it would be reminding me of Buddy. And I couldn't handle it.

1 They had to put me on Valium, the highest grain of Valium that
2 you can take. Yes, I got hooked on Valium. I had to take them
3 to get up and to go to bed at night. But I, I could not handle
4 my kids and Joe Lundy's mother was there for me. She would take
5 my kids and my parents would keep my kids. But she fell in love
6 with my children and Jeff most of all. And she would take them
7 and keep them when I couldn't have them before when I was sick,
8 the sickness I had previous to. A bond had established between
9 Jeff and her and she kept Jeff a whole of times because there was
10 times I had to go to bed and stay in bed months at a time because
11 I couldn't put my feet on the floor, the previous two operations
12 that I had in '68, end of '68 and the time I had the operations
13 in '69.

14 Q Estelle, where was Charlie Cromartie during all of this
15 time?

16 A Me and Charlie had separated.

17 Q What was the reason for the separation?

18 A It wasn't no reason. We just couldn't -- we, it was
19 just that, I have to be honest, it was a shotgun wedding. We was
20 made to get married. Yes; we had -- I had got pregnant. I guess
21 a lot of people get pregnant. And, and you get pregnant, that
22 don't mean that you love someone because you're pregnant. It's
23 just that you got caught up in the system. And we did. And
24 we -- my mama said that, that I had to marry, and which we got
25 married and, and -- he was a good person. He was a very good

1 person. But it was hanging over us that we was made to get
2 married and we couldn't stay together. We, we separated during
3 the previous time when I had -- after we separated I come back
4 and I got pregnant with Buddy. And he was -- We separated. He
5 wasn't here. He wasn't here when Buddy was, when Buddy died.
6 And he wasn't here when I had -- I had to raise Jeff all by
7 myself.

8 Q Did he ever give you any emotional support or any type
9 of support at all with regard to--

10 A The Court had ordered us to -- him to support one child
11 and me --

12 Q I'm not talking about financial support, Estelle. I'm
13 talking about when Jeff was born --

14 A No.

15 Q -- did he want Jeff?

16 A No. He, he, he -- One time he said Jeff wasn't his.
17 You know, he never give me support. Jeff and Anthony was my
18 children. They was mine. I didn't ask for nothing. But we had
19 a bond, my two boys and I after I got control of my life. When I
20 got control of my life. They wasn't -- Beforehand, I was doing
21 what I always did. I done more than the father did. I fed them
22 and I clothed them. But I didn't know what love was until I lost
23 my child. When I lost my child, I know what love was.

24 Q Estelle, how long were you hooked on these drugs?

25 A Buddy died in '69. They started me on drugs in the

1 hospital. About '72 or '73. I, I didn't consider myself hooked.
2 I just had to take them to survive. My aunt one day come to me
3 and she said, Estelle, you're gonna have to get away from here,
4 is the only way to survive. And I didn't know what she meant, so
5 I left here. I can't tell you the year. It's -- But I left here
6 and I went to Farrell, Pennsylvania to my uncle's. He helped me.
7 I left my children here because I couldn't help my children. And
8 for one year I was staying away from my kids. And a year to the
9 day that I left I got off of drugs in that year. I got a good
10 job for my children. I come back down here and I got my children
11 from my parents and they never left my sight again.

12 Q How old was Jeff, approximately how old was he during
13 this period of time?

14 A He was about six or seven years old.

15 Q About the time he was beginning to start pre-school and
16 kindergarten --

17 A He was in the first grade here.

18 Q Then he started school in Ohio?

19 A In Ohio. I moved to East Liverpool, Ohio and got a
20 place for them.

21 Q And where did, where did ya'll move from Ohio? Where
22 did you go from there?

23 A From Ohio to Farrell, Pennsylvania. I, I got married.
24 I had got married, but prior to the marriage I had got married to
25 a gentleman here and he -- it wasn't legal. He was already

1 married. I didn't know at the time. But then I married again in
2 Farrell, Pennsylvania. I met, I met a man while I was in the
3 hospital again. I had had -- I had to learn how to walk over
4 again. I lost the use of my legs and I had to -- I was in the
5 hospital for one solid month to learn to walk again.

6 Q How would you describe the marriage you had to the
7 gentleman who was already married? Was that a good marriage?

8 A No.

9 Q What was wrong with that marriage?

10 A He, he beat me. He -- It just, it just wasn't good.

11 Q Was he good to your children?

12 A No. He, he would tell the children -- He was just
13 possessive. We had to do what he wanted us to do.

14 Q What about your second marriage?

15 A My marriage to John Major started off very good and,
16 and I thought it would be a good relationship or marriage, but he
17 was a street man. But I had, I had got saved and I lived a life
18 according to that and I stayed married to him seventeen years.

19 Q As a result of your marriage to John Major, did, did
20 your life take another bad turn?

21 A Yes.

22 Q What happened then?

23 A Well, I, I stayed in West Palm with him. We went, we
24 moved to Texas. And my husband -- First of all, we moved to
25 Texas from Farrell, Pennsylvania. And my husband was, like I

1 said, a street man and he didn't care where he brought the woman.
2 He brought them in the house. I worked at night. And when I
3 come home in the morning, he would tell me to call before I come
4 home, and I thought it was just to call him to, for him to pick
5 me up. And come to find out it was a call to him so he could
6 take the other woman out of the house.

7 Q Were your sons exposed to this kind of lifestyle?

8 A Jeff were. Jeff was, Jeff were, and also his own son
9 was exposed because I had one of his children in Texas.

10 Q So Jeff grew up with this kind of relationship staring
11 him in the face; didn't he?

12 A He grewed up resenting that. He resent that, this man,
13 why should I let this man come in our house.

14 Q What else happened to you as a result of your marriage
15 to John Majors? Did you have financial problems?

16 A Yes; we did. We had financial problems. I worked. He
17 throwed it away.

18 Q Did you eventually have to declare bankruptcy?

19 A I didn't declare bankruptcy, but I am now. I can't get
20 nothing. I can't do -- because even my taxes, he said he had
21 filed taxes. He didn't file taxes. He didn't do nothing. It
22 was just a, a front and I thought it was, you know, -- I didn't
23 know. All I know is I worked and tried to provide. As fast as I
24 worked to provide, he would take it and throw it away.

25 Q Seventeen years of that kind of life?

1 A Yes.

2 Q And Jeff was in the middle of that seventeen years;
3 right?

4 A Yes. I have to be grateful for his uncle, John's
5 brother. He took Jeff under his wings and, and he worked with
6 Jeff and he loved Jeff. He got Jeff into the Job Corps and
7 helped Jeff, you know. They were supportive.

8 Q Estelle, you've now got your life together; haven't
9 you?

10 A Yes; I do.

11 Q And you've married a, a very nice man; haven't you?

12 A Yes. I have a wonderful husband.

13 Q What's his name?

14 A Joseph Barreau.

15 Q Is he here?

16 A Yes; he is.

17 Q All that happened after Jeff was arrested; did it?

18 A Yes.

19 Q And, in fact, it was in 1995; wasn't it?

20 A Yes.

21 Q Estelle, you haven't been able to sit through the
22 trial; have you?

23 A No; I have not.

24 Q Because you're a witness and you had to stay outside?

25 A Yes.

1 Q But you know from having been told what the facts were
2 as found by this jury? You understand that?

3 A Yes; I do.

4 Q And you understand that this jury has found that there
5 was evidence upon which they could base their verdict that your
6 son, Jeff, was convicted and has been convicted of the offense of
7 murder? You understand that?

8 A Yes; I do.

9 Q You understand we accept that verdict? You understand
10 that?

11 A I understand that ya'll accept that verdict; yes.

12 Q Okay. And you understand that the ladies and gentlemen
13 of this jury now have to decide what the appropriate punishment
14 is based upon that verdict? You understand that?

15 A Yes; I do.

16 Q Now, we've asked you to uncover some very bad parts of
17 your life. You've had to sit there in front of strangers and
18 tell them about your life. Are you doing that as a part of your
19 testimony to this jury to try to save your son's life?

20 A Yes; I am. That and then also let everybody know that
21 my past is done with. It can't be undone.

22 Q Has, has the family talked about the tragedy of Mr.
23 Slyszy's death?

24 A Yes; we've talked about it.

25 Q And prayed about it?

1 A And prayed about it, prayed for the family.

2 Q You understand that that's a terrible tragedy?

3 A Yes. It's very terrible. It shouldn't be, it
4 shouldn't have to be.

5 Q Are you asking this jury to consider sparing your son's
6 life?

7 A All I'm asking is that you give him a, give him a
8 second chance, is all I ask, give him a second chance.

9 Q Now, Estelle, you understand that this jury only has
10 three options.

11 A Yes.

12 Q All of them probably would mean that your son would die
13 in prison. Life, life without parole or a sentence of death. Do
14 you understand that?

15 A Yes.

16 Q And given those options that this jury has, are you
17 still asking them to spare his life and not sentence him to
18 death?

19 A Yes; I am.

20 Q Why are you doing that?

21 A Because that's my son. I love him unconditionally.
22 All I ask is that ya'll just look on him and consider to give him
23 a second chance. My son is a wonderful child. I reckon
24 everybody say that about their child. But I know my child and
25 all I'm asking for ya'll to do, have mercy on my son and have

1 mercy on me as a mother of my son. I've lost one child and God
2 knows, I don't want to lose another one.

3 Q Buddy Cromartie was a son named after Charlie
4 Cromartie; wasn't he?

5 A Yes. He was Charlie, Jr.

6 Q Is that his death certificate?

7 A I, I've never seen the death certificate.

8 Q Look at it and see if the information on there is
9 correct?

10 A I have to get my glasses because I can't see.

11 MR. MEARS: Your Honor, it's a certified copy of the
12 death certificate. Certified copy of the death certificate.
13 It's Defendant's Exhibit 19. I've shown this to the State.

14 THE COURT: Any objections on behalf of the State?

15 MR. HARDY: No, Your Honor.

16 THE COURT: It's admitted without objection.

17 BY MR. MEARS:

18 Q Estelle, have you, have you had any conversations with
19 Charlie Cromartie, Sr. about why he rejected your son?

20 A Yes. Once I asked him and he, he said that it wasn't
21 his son. Then I brought him up on the date and he put the date
22 together. He knowed then that it was his son.

23 Q So Jeff has gone through his life not really knowing in
24 his mind who his father was?

25 A Yes.

1 Q Is there any conversation about why Jeff came back to
2 Thomasville in February of 1994?

3 A He said he just wanted to come home.

4 Q Coming home?

5 A Yes.

6 MR. MEARS: Your witness.

7 MR. HARDY: No questions, Your Honor.

8 THE COURT: Ms. Cromartie, you may step down.

9 MR. MEARS: Your Honor, we have no further evidence to
10 present at this time.

11 THE COURT: All right. Does the Defense rest?

12 MR. MEARS: We rest.

13 THE COURT: Ladies and gentlemen of the jury, the next
14 stage in this particular phase of this trial will be the
15 closing arguments and the charge of the law from the Court.

16 Prior to the attorneys interposing their closing
17 arguments, I need to have a brief conference with them. I
18 anticipate that conference will take approximately,
19 approximately five minutes. And then following that
20 conference we will begin with the closing arguments.

21 Let me ask at this time that you retire to your jury
22 room.

23 (Whereupon the jury retires from the courtroom,
24 after which the following transpired)

25 THE COURT: All right. Gentlemen, at this time let me

1 direct your attention to the Unified Appeal Procedure,
2 specifically Trial, Section B, 2.

3 Gentlemen, we have previously had an opportunity to
4 discuss any requests to charge that were submitted to the
5 Court in regards to the penalty phase of this trial. The
6 Court has previously addressed these matters. And at this
7 time give Counsel, the State and the Defense, an opportunity
8 address these specific requests to charge, if requested.

9 Now, Mr. Mears, as you had acknowledged earlier, prior
10 to interposing the evidence, presenting the evidence this
11 morning, the Court has, has given both parties an
12 opportunity to review the charge that the Court does
13 anticipate, in fact, giving to the jury following the
14 closing arguments. And with that in mind, is that, is that
15 sufficient to give you direction in regards to which of your
16 requests to charge the Court will and will not give?

17 MR. MEARS: Yes, Your Honor. I, I'm satisfied that the
18 Court has advised us properly of what you will and will not
19 charge and, with that regard, we've submitted written
20 requests to charge and the Court has gone over those. And
21 we have an understanding, we believe, of what the Court is
22 going to charge in this particular case.

23 THE COURT: All right, sir.

24 MR. MEARS: We would simply ask the Court to allow us
25 to reserve any objections until such time as a Motion for a

1 New Trial or a notice of appeal is filed in this case.

2 THE COURT: Yes, sir. And you also, Mr. Mears, in
3 regards to the requests to charge that were presented to the
4 Court, you understand the Court's ruling in regards to those
5 charges, and specifically in regards to what the Court did
6 indicate couldn't be argued to the jury insofar as residual
7 doubt and things of that nature. There's some requests to
8 charge that in the Court's opinion are argumentative, the
9 Court should not charge, but, in fact, would be proper for
10 the Defense to argue such to the jury.

11 MR. MEARS: That's correct. I understand. And, Your
12 Honor, the Court in its charge that it proposes to give to
13 the jury, you used the language with regard to a verdict
14 that could be rendered with regard to the mercy issue, the
15 jury can render a verdict based upon mercy. It's my
16 understanding I can argue mercy and compassion as a basis
17 for their rendering a verdict. Even though the Court did
18 not give the rather lengthy charge that we requested, you
19 did include that as part of the standard charge the Court's
20 going to give.

21 THE COURT: Yes, sir.

22 MR. MEARS: It's my understanding I can, I can argue
23 mercy then to them.

24 THE COURT: Yes, sir.

25 Gentlemen, are there any issues in regards to Section

1 2, B? Any issues raised during the sentencing phase which
2 need to be addressed at this time in regards to rulings on
3 any evidence? I don't believe there are any objections to
4 any evidence during that particular phase.

5 Gentlemen, let me direct your attention to Section,
6 Part III of the Checklist for the Unified Appeal. I
7 specifically ask at this time, and we'll go back over these
8 particular matters as directed by the Georgia Supreme Court.

9 Any issues in regards to the admissibility of evidence
10 that was presented? I think not. There were no objections
11 raised. Is that correct, gentlemen?

12 MR. MEARS: Yes, sir.

13 THE COURT: Any issues which may arise in regards to
14 the specific statutory aggravating circumstances?

15 MR. MEARS: Judge, we would renew our objection to the
16 aggravating circumstances that the Court, excuse me, that
17 the State has submitted that the Court charge the jury.
18 It's my understanding that the Court has made adjustments to
19 conform to the evidence with regard to that aggravating
20 circumstance that relates to B-7 aggravator. And the Court
21 has made an attempt, and has, in fact, altered that charge
22 to conform to the evidence as the Court has seen it
23 presented. I wanted to make sure that my objection to the
24 aggravating circumstance in general was still preserved.

25 Also, my specific objection as far as a directed

1 verdict with regard to the third aggravator is restated. I
2 feel that there's been not a sufficient showing either
3 during the case of guilt-innocence nor the presentation of
4 evidence to substantiate any charge on the B-7 aggravator.
5 And I restate that objection at this time.

6 THE COURT: All right, sir. Thank you, sir.

7 Mr. Mears, I, just for your direction I would intend to
8 give a charge on the B-7 aggravators, again, as indicated
9 through the requests of charge that Counsel for both parties
10 had an opportunity to review this morning.

11 Gentlemen, does Counsel for either part anticipate any
12 particular issues in regards to closing argument, any issues
13 that we need to address in regards to closing argument that
14 is going to be presented in a moment?

15 MR. MEARS: I don't anticipate. I, I have never tried
16 a death penalty case with Mr. Hardy so I'm not aware of what
17 he may or may argue. But I'm confident that there will be
18 no issues that I should anticipate at this point. I intend
19 to argue with regard to the Defense argument the testimony
20 of the mitigation witnesses. I do not intend to argue
21 against, in any substantial detail, the aggravating
22 circumstances. I'm not going to. So I think that sometimes
23 is an area of objection that the prosecutors feel that they
24 should make. I do not intend to go into that in any
25 substantial area. I cannot think of any area that I will

1 argue that should give rise to any particular concern on the
2 State's part.

3 THE COURT: All right, sir. Gentlemen, I believe we've
4 already covered any issues which may arise in connection
5 with the Court's proposed charge. Is that correct?

6 MR. HARDY: Yes, sir.

7 THE COURT: All right, sir. Are there any issues which
8 may arise in connection with the possible verdicts in this
9 case? Counsel has had an opportunity likewise to review a
10 verdict form prepared by the Court. Is that correct?

11 MR. HARDY: Yes, sir.

12 MR. MEARS: That's correct.

13 THE COURT: And with the exception of the count of
14 Defense's objection in regards to the aggravating
15 circumstances the Court is going to charge the jury on, are
16 the parties satisfied with that verdict form?

17 MR. HARDY: Yes, sir.

18 MR. MEARS: Yes, sir.

19 THE COURT: Anything else that needs to be addressed
20 prior to bringing the jury in?

21 MR. HARDY: No, sir.

22 MR. MEARS: I can't think of anything.

23 MR. HARDY: Mr. Mitchell is going to address the jury.

24 THE COURT: All right, sir. Gentlemen, there's no, no
25 evidence -- I'm just -- I'm, I'm making sure that we have

1 addressed all these matters on the Checklist as the Supreme
2 Court has directed.

3 MR. MEARS: Your Honor, it just occurred to me. I've
4 identified -- And we had -- I think the death certificate,
5 Defendant's Exhibit 19, had been identified and offered into
6 evidence. It was offered without objection from the State.

7 MR. HARDY: Yes, sir. It was. I think all of his
8 items have been offered and admitted.

9 MR. MEARS: The live, the birth certificate for Ray
10 Jefferson Cromartie which is Defendant's 21 --

11 THE COURT: 21.

12 MR. MEARS: 21. I'm not sure that I actually offered
13 that into evidence. If I didn't, I do it now.

14 THE COURT: It is admitted.

15 MR. MEARS: Okay. And I have a, a copy of a newspaper
16 article that, the best certification I can give you, was
17 provided as a copy of an article from the Thomasville Times
18 Enterprise. It was identified as Defendant's Exhibit 20. I
19 realize Ms. Estelle Barreau was not able to say that was the
20 article. But it's, I think, self authenticating. And just
21 so the record will reflect, I would tender Defendant's
22 Exhibit 20. I think Mr. Hardy has had an opportunity to
23 view the article.

24 MR. HARDY: We've seen it, Your Honor.

25 THE COURT: I beg your pardon?

1 MR. HARDY: We have -- He's let us look at it a minute
2 ago, Your Honor. It's got a date of the edition in the
3 article.

4 THE COURT: Any objections?

5 MR. HARDY: Leave it with the Court, Your Honor.

6 THE COURT: It's admitted without objection.

7 MR. MEARS: That's all the evidence, documentary
8 evidence that we'll submit, Your Honor.

9 THE COURT: All right, sir.

10 MR. MEARS: Excuse me just a moment, Your Honor.

11 THE COURT: Mr. Mears, I do need to advise you that any
12 objections to the State's sentencing phase closing argument
13 will be raised, excuse me, will be waived if not raised as
14 soon as the grounds therefor arise.

15 In addition, Mr. Cromartie, I need to address you at
16 this time, sir. I need to ask whether or not you have any
17 objections to Mr. Mears or Mr. Bryant acting as your Defense
18 Counsel?

19 MR. CROMARTIE: (Shakes head negatively)

20 THE COURT: Or any objections as to the manner in which
21 they are conducting your defense?

22 MR. CROMARTIE: (Shakes head negatively)

23 THE COURT: You may bring the jury in.

24 (Whereupon the jury returns to the courtroom,
25 after which the following transpired)

1 THE COURT: Mr. Mitchell?

2 MR. MITCHELL: May it please the Court.

3 Members of the jury, the State of Georgia would like to
4 take this opportunity to thank you for your service as
5 jurors in this case.

6 Now, we are in the sentencing phase of this trial. You
7 now have several jobs. One of the first things that you
8 will need to do is determine whether or not there are any
9 aggravating circumstances. The State expects that the Court
10 will instruct you in the law as to three different possible
11 aggravating circumstances. The first being, was the murder
12 of Richard Slyszy committed while the Defendant was engaged
13 in the commission of another capital felony. The State of
14 Georgia submits to you that the capital felony in this case
15 is the offense of armed robbery, the armed robbery of the
16 Junior Food Store where Richard Slyszy worked.

17 Secondly, was the murder of Richard Slyszy committed for
18 the purpose of receiving money or any other thing of
19 monetary value. The State of Georgia asks you to consider
20 the twenty-two beers taken from the Junior Food Store.

21 And, thirdly, was the murder of Richard Slyszy
22 outrageously or wantonly vile, horrible or inhumane in that
23 it involved depravity of mind or an aggravated battery to
24 the victim.

25 You should consider all of the evidence heard in the

1 guilt-innocence portion of this trial as well as in this
2 sentencing phase in reaching this decision. You should also
3 consider the mitigating evidence submitted by the Defendant
4 along with the law which will be charged by the Court.

5 The State of Georgia would like to remind you of the
6 oath as jurors that you took at the beginning of this trial.
7 During the jury selection process most of you, if not all of
8 you, were asked the question, could you impose the death
9 penalty and would you impose the death penalty if you
10 thought that it was warranted based upon the evidence and
11 the law. Each of you responded in the affirmative.

12 The law requires that you consider all three possible
13 sentences: life, life without the possibility of parole and
14 death. The State of Georgia submits that under all the
15 facts and all the law of this case that there can be only
16 two realistic options which present themselves: death and
17 life without parole. The State of Georgia submits that the
18 aggravating circumstance of armed robbery has been proven in
19 this case beyond a reasonable doubt as well as the other two
20 aggravating circumstances.

21 After finding the existence of an aggravating
22 circumstance, then you can also consider the other victim in
23 this case, Dan Wilson, who was also shot in the head and has
24 had his carotid artery tied off by Dr. Hall. The State of
25 Georgia would submit that under all the facts of this case

1 that at the very least a sentence of life without the
2 possibility of parole should be imposed.

3 Ladies and gentlemen, this case is about Richard Slysz,
4 the victim. This trial is and has been about what happened
5 to Richard Slysz. This trial is about Richard Slysz being
6 shot twice in the head. This trial is about Richard Slysz
7 being shot twice for twenty-two cans of Budweiser beer.
8 Richard Slysz's life was taken away from him. Richard
9 Slysz's life can never be returned. Richard Slysz's life is
10 lost forever. Richard Slysz was a human being working the
11 midnight shift at a convenience store. Richard Slysz lost
12 his life while trying to earn a living.

13 Ray Jefferson Cromartie gave Richard Slysz absolutely
14 no chance. Ray Jefferson Cromartie did not ask Richard
15 Slysz for any money. He just shot Richard Slysz in the
16 head, twice. Richard Slysz was killed for twenty-two cans
17 of beer without one word being said. Richard Slysz had a
18 self-appointed judge, jury and executioner. And Richard
19 Slysz's judge, jury and executioner that showed him no mercy
20 was Ray Jefferson Cromartie. Richard Slysz was killed
21 without one word being said for twenty-two cans of beer.
22 Twenty-two cans of beer. That's all that Richard Slysz's
23 life was worth to Ray Jefferson Cromartie, twenty-two cans
24 of beer.

25 No one other than Ray Jefferson Cromartie has placed

1 him in the position that he is in today. Whatever your
2 verdict and whatever happens to Ray Jefferson Cromartie, he
3 has done it to himself. He can blame no one else. This
4 Defendant should be held responsible for his actions. This
5 Defendant should be given just as much mercy as he gave
6 Richard Slys.

7 Richard Slys was sitting out at that Junior Food Store
8 with a pencil in his hand and was shot twice in the head
9 without warning for nothing. Richard Slys is dead.
10 Richard Slys didn't get to have a day in court. Richard
11 Slys didn't get to have a lawyer to defend him and fight
12 for his life. Richard Slys didn't have the chance to argue
13 to a jury and ask for mercy. Richard Slys was given
14 absolutely no chance at all. Richard Slys's executioner,
15 Ray Jefferson Cromartie, decided that Richard Slys's life
16 was worth nothing and he executed him for twenty-two cans of
17 Budweiser beer.

18 Where no mercy is shown, how much mercy should be given
19 in return?

20 THE COURT: Mr. Mears?

21 MR. MEARS: Good morning. I stood before you on Friday
22 and I hope you will remember this, I said that the
23 attorney's job is not to convince you. That's the job of
24 the evidence. The attorney's job is to frame an argument
25 that will focus your attention on what the attorneys believe

1 your focus should be with regard to making a particular
2 decision.

3 You heard the evidence. You've rendered a verdict.
4 And we accept that verdict because you rendered the verdict
5 after you had heard all of the evidence. You came to the
6 conclusion that the evidence showed that Jeff committed
7 these crimes.

8 We're not here this morning to reargue the fact that
9 Jeff Cromartie is responsible for the death of Mr. Slysz.
10 No attorney in their right mind and no attorney with any
11 ounce of humanity would argue to you, or even want you to
12 infer that the death of Richard Slysz was not a tragedy. It
13 was senseless. It was senseless. It was one of those
14 supreme tragedies. But that's not what we're here for
15 today. You've decided who is responsible.

16 The question now is what do we as a community and as a
17 society do with Ray Jefferson Cromartie. I tried to write
18 out my notes so I wouldn't get too lost with this. But I
19 wanted to make sure that, there were a couple of things that
20 Mr. Mitchell said that I want to address right up front.
21 This decision that you're going to make is not about not
22 punishing Jeff Cromartie. You're going to punish him. The
23 only question is in what manner are you going to punish him.
24 The only three options you have are the most severe
25 punishment that the State of Georgia allows: life, life

1 without parole and death.

2 So it's not about not punishing Jeff. It's about how
3 you're going to punish him. And it's not about whether or
4 not he is responsible. That was your verdict and that's
5 already been decided. You see, what -- and, and I wrote
6 this down because I, I knew that it would be a subject that
7 we would all discuss this morning, Mr. Mitchell and I.
8 Because, you see, at this point in large part, what we're
9 deciding is not what he has done. That's been decided.
10 What we're deciding now is what are you going to do. You
11 see, at this point the action about deciding who is
12 responsible, how he was responsible has already been
13 decided. The question now is what are we as a community
14 going to do with Jeff Cromartie. You see, that question
15 reflects who we are as a people and as a community.

16 I think just about every juror here when I, during the
17 jury selection process, I announced that I was not from
18 Thomas County and would you hold that against me. I'm from
19 Atlanta. And I am not a member of the Thomasville
20 community, though it seems like we've been here for a long
21 time. But I have learned a little bit about this community
22 being here, living here for the past several, several weeks.
23 And there's one thing that stands out about Thomas County
24 and Thomasville. And quite frankly, I was surprised. Being
25 from Atlanta, we have our stereotypes about outside of

1 Atlanta just like people outside of Atlanta have stereotypes
2 about Atlanta. And I was surprised at the sense of humanity
3 and, and congeniality that I've seen here in this community.
4 But, you see, your verdict today is going to reflect who you
5 are as a community, but perhaps even more importantly, who
6 you are as individuals and what are your values, because
7 it's now the time to decide what you individually are going
8 to do with Ray Jefferson Cromartie. Because, you see, there
9 are twelve of you making this decision. But I believe the
10 Court's instructions will, at least in part, point out that
11 this is an individual decision that each of you have to
12 make. This is not a collective decision that you make,
13 because we're talking about whether another human being is
14 going to live or die.

15 If you stop and think about it, outside of war, almost
16 no one ever has to make a decision as to whether another
17 human being sitting face to face, outside of war, you never
18 have to make that decision as to whether or not another
19 human being will live or die.

20 Now, that is a heavy, heavy decision. It's not one
21 that you will make lightly, whatever it is. It can't be.
22 You couldn't have sat through the trial, you couldn't have
23 heard the evidence and you could not have been a member of
24 this community qualified to sit on a jury and not have a
25 sense of responsibility about you. But, you see, one of the

1 things that I would urge you to remember back to the time
2 you were interviewed for this position that you now hold,
3 each of you swore under oath that you would not
4 automatically vote to kill Ray Jefferson Cromartie because
5 he was convicted of the offense of murder. Each of you said
6 under oath that you would not make that decision until you'd
7 heard all the evidence, you'd heard the law as it applies,
8 and then you went back and deliberated. And you took an
9 oath much like the jurors, excuse me, much like the
10 witnesses took in this case. You took an oath to tell the
11 truth. You took an oath that the responses you gave us
12 during jury selection was the truth, and that is that you
13 wouldn't automatically vote to kill Jeff Cromartie. That
14 you would consider all of the options. You would consider
15 all of the evidence. And you raised your hand when you took
16 that oath.

17 Do you know why we raise our hands when we take oaths?
18 Because, it goes back to Roman times. It goes back to the
19 time when only free people could give an oath. And in the
20 Roman Empire all slaves were marked with a big "X" in the
21 palm of their hand and were scared permanent. So in order
22 to render an oath you had to prove you were not a slave.
23 And it's a tradition that's stayed with us in our judicial
24 system, our sense of justice because it, it's reflective of
25 the fact that we take oaths very seriously. And we take the

1 oaths of office that you now hold to mean it's an individual
2 oath. You didn't take that oath as a large, or part of a
3 larger body of people. You took it individually. You
4 weren't brought in here to say, all twelve of you, twelve of
5 you agree to this. No. You took an oath and you swore that
6 you would be an individual and you would decide this case
7 based upon what you thought was right. We respect that and
8 everyone in this courtroom expects that, and I'm sure you do
9 too.

10 Now, let's stop and think a minute, if you will. And
11 I, I probably will get a little emotional because it's hard
12 not to do one of these cases and feel some emotion. You
13 see, since July of 1996 Jeff Cromartie has been my
14 responsibility. He's been Mr. Bryant's responsibility. But
15 since July of 1996 his life has been in my hands. I can
16 tell you, there hasn't been too many days in a row at some
17 point during the day I haven't said, "What am I going to do
18 about Jeff Cromartie's case"? Since July of 1996 there has
19 not been very many days pass, either getting up or lying
20 down, that I haven't asked myself the question, "What am I
21 going to do with this case"? It's scary, frightening.
22 It'll drive you crazy. It'll make you absolutely crazy with
23 fear sometimes. But when I sit down and I go over there and
24 sit at that table, when I finish my argument, he's your
25 responsibility. I won't feel any great sense of relief,

1 believe me. But the responsibility for his life will no
2 longer be in, in my scrawny little hands. They'll be in
3 your hearts and within your soul. Whatever you do to him at
4 that point is you. I will sit down and my responsibility
5 for whether another human being lives or dies will become
6 your responsibility.

7 Now, Mr. Mitchell talked about showing no mercy. He
8 talked about the aggravating circumstance. Quite frankly,
9 the aggravating circumstances in this case, you said that
10 you would not consider what you were going to do until you
11 were proven, it was proven to you beyond a reasonable doubt
12 that at least one aggravating circumstance had been proven
13 beyond a reasonable doubt. Ladies and gentlemen, you've got
14 three to consider in this case. Once you've made that
15 decision, once you've made the decision that one of those
16 aggravators exist, then you get down to whether or not there
17 is a reason in your heart and in your mind and in your soul
18 not to sentence him to death. That's when that takes place.

19 I don't want to say that the aggravators are there.
20 But I'm not going to stand before you and say that your
21 verdict in the guilt-innocence didn't pretty well take care
22 of that. I'm not going to, hopefully won't insult your
23 intelligence that way. You see, that's just the starting
24 point. That's just the point that you begin. That's just
25 where you begin to decide what will happen to Ray Jefferson

1 Cromartie.

2 And, and one of the things that Mr. Mitchell talked
3 about at length was don't show mercy, don't show mercy. He
4 said that Jeff didn't show Richard Slyszy any mercy so don't
5 show him any mercy. Well, ladies and gentlemen, that's a
6 lot like, let's kill Jeff Cromartie to show it's wrong to
7 kill people, that's what that'll show them. And then we
8 keep the cycle of killing going on. Killing anyone is
9 wrong. Mr. Slyszy's death was wrong. The fact that he was
10 murdered doesn't mean that you have to continue to kill him.

11 The mitigation evidence and the evidence that you heard
12 this morning was not meant as an excuse. I, I sort of got
13 the impression that's what the State thinks, or they
14 thought, that hearing Ms. Angeline Cromartie, that beautiful
15 seventy-three year old lady, she wanted to stand up and talk
16 to you. You see, you heard from her, not to excuse anything
17 her grandson did. That's not what that was about. You see,
18 you heard from her because it's important for you to know
19 that Jeff Cromartie is a product of this community just as
20 most of you are. Angeline Cromartie spent seventy-three
21 years of her life, most of it on the Pebble Hill Plantation.
22 Most of it in the kitchens at Archbold Hospital. Now, at
23 seventy-three she's embarking on a new career at
24 Southwestern. You see, that's not an excuse not to sentence
25 him to death, that's information that you need to have when

1 you decide the effect of your decision.

2 You see, when you sentence Jeff Cromartie to death or
3 to life without parole or to life, you're sentencing not
4 only Jeff Cromartie, you're sentencing someone's grandson.
5 A seventy-three year old lady who is part of this community.
6 She never sat at the seats of power. She never sat at the
7 seats of commerce in this county. But it's the Angeline
8 Cromarties in your community that makes it the place it is.

9 Whatever decision you make with regard to Jeff, you're
10 going to make it with regard to her in one way or the other.
11 It's not just Jeff Cromartie that will be sentenced to
12 death, it's her grandson. That is not a reason not to do
13 it. But it's certainly something you should consider when
14 you're deciding the options available to you as individual
15 jurors.

16 You heard from Charlotte Johnson. She didn't, wasn't
17 able to give you a whole lot other than the fact that
18 there's a big family here. They've had some hard times.
19 And that she loves him. It's her cousin. So when you
20 sentence Ray Cromartie to whatever sentence you sentence him
21 to, you'll be sentencing someone's cousin. You see, the
22 pattern that -- the evidence is not to excuse but the
23 evidence is, is presented to you to try to give you an idea
24 of the breadth of the decision you're going to make. Each
25 of these individuals were not brought before you, they were

1 not put on that witness stand to excuse anything. But don't
2 you think that if you're going to sentence someone to death
3 or to life without parole or to life imprisonment, you ought
4 to do it knowing who they are and who Jeff Cromartie is? In
5 some small part, it's his family, his friends and those
6 people that love him. You can't write this chapter in his
7 life without having all of the information.

8 Please don't misunderstand the evidence. It was not
9 presented as an excuse for him. There's not an excuse for
10 murder. If there were an excuse we wouldn't be in a
11 sentencing hearing. If it were an excuse we wouldn't be
12 here deciding what kind of punishment to give him. No. It
13 was simply meant to let you know in, in the brief period of
14 time that we have who he is.

15 Now, hard life. Well, you know, that's really -- I
16 made myself a note here on that. I was trying to figure out
17 some, something to say to you individually as jurors to try
18 to focus on hard life, because, you see, jurors don't like,
19 by and large, to excuse this. And they don't like to think
20 that, well, because you've had a hard life that's okay to go
21 out and kill somebody. It's not. But, you see, that's not
22 why we're here. It's not an excuse. And I've said that
23 over and over again. I hope that you're listening.

24 Well, you see, I was thinking of the parable of the
25 sower when Jesus talked about throwing the seeds and some of

1 the seeds fell on rocks and the dust came along and blew
2 them away and they, and the seeds died. I was thinking also
3 of that parable about some of the seeds fell in the thistles
4 and they grew up a little bit. The thistles wrapped around
5 them and they died. And some of the seeds fell on good soil
6 and they multiplied a hundredfold. Well, see, Jesus was
7 talking about, at least in one part, about the word of God,
8 but he was also talking about people. Some people fall on
9 the rocks, some people fall among the thistles, some people
10 fall in good ground. Some people have roots. Some people
11 are moved from city to city to city. Some people's lives,
12 some people's lives get choked by the adults that they grow
13 up with. Some people's lives get blown away by abusive
14 adults. Some people's lives get strangled in hope. The
15 ability to reason, the ability to think, the ability to
16 care, the ability to be like the rest of us, somehow it gets
17 choked out of us.

18 The fact that someone has a hard life is not a reason
19 not to sentence them to death for murder. The fact that
20 Jeff Cromartie might have had a hard life, his mother might
21 have had rough times, he might have grown up in a family,
22 successive families of abusive, sorry men, that's not an
23 excuse not to sentence him to death, but it is, don't you
24 think, don't you think it's something you should consider
25 when you're deciding whether to kill him or to show mercy?

1 You see, showing mercy and giving compassion doesn't
2 take away the tragedy of Richard Slyszy's death. Heaven help
3 us if we deserve mercy. I was always taught that mercy is
4 something you got that you didn't deserve. That mercy and
5 compassion was something that we got because God loved us.
6 You see, that's where the prosecutors always handle it.

7 Mr. Hardy accused me of having a standard closing in --
8 you know, something they teach us. Well, I must have
9 skipped school that day. I mean, I know we all do a lot of
10 things the same way, but, there's no standard cookie cutter
11 type of argument you make in this case, please believe me.
12 And, and, but, here again, I hear a prosecutor say, don't
13 show mercy because he didn't show mercy. If that were the
14 case, would there ever be any mercy for anything?

15 I grew up in rural Mississippi. Went to a Baptist
16 church. And I grew up singing a hymn that almost all of
17 ya'll have grown up listening to. I borrowed this from our
18 housekeeper where we're staying this week. "Amazing grace,
19 how sweet the sound. Amazing grace, how sweet the sound
20 that saved a wretch like me. I once was lost but now I'm
21 found, was blind but now I see. Twas grace that taught my
22 heart to fear and grace my fears relieved, how precious did
23 that grace appear the hour I first believed". The author of
24 that hymn was a man named John Newton, N-E-W-T-O-N. John
25 Newton wrote that hymn in the late 1790s after he had become

1 a Christian.. Before John Newton wrote that hymn he was a
2 captain of a slave trader ship. He was responsible for the
3 deaths of thousands of African men, women and children as
4 they were brought from the Horn of Africa into this country.
5 John Newton received grace and he wrote about it.

6 No one is beyond redemption. John Newton wrote about
7 grace that was bigger than our sins. Because if mercy and
8 grace is not bigger than our sins, and if it's something you
9 have to earn, then it's only the rich that will get it.
10 It's only the righteous that will get it. And heaven help
11 the rest of us. You see, that's not what mercy is. Mercy
12 is the compassion to take the grace that God has given all
13 of us and show it to other people.

14 Does Jeff Cromartie deserve your mercy? No. None of
15 us deserve mercy. It's something you give. You see, that's
16 the problem of arguing a case like this. That's the problem
17 of, with dealing with things like mercy, because it's hard,
18 it's hard to tell you, please give him mercy. I can't tell
19 you he deserves mercy. Don't give him mercy because his
20 grandmother lived on Pebble Hill Plantation for seventy-
21 three years and is a member of this community. None of
22 those are reasons to grant mercy. But they are reasons for
23 you to consider his life, because mercy has nothing to do
24 with him. Mercy has to do with you and you and you and you.

25 One other thing about the mitigation witnesses. Why do

1 we celebrate Father's Day and Mother's Day? Have you ever
2 thought about that? I mean, other than Hallmark has a lot
3 of cards out for those particular occasions. You see, we
4 don't celebrate the day. Those are just arbitrary times
5 that come about. Not like Christmas where we celebrate the
6 birth of our Savior. We celebrate fathers and mothers.
7 Why? Because it's important. They're important. We
8 celebrate mothers because they give training to their
9 children. They tell children how you get through the hard
10 times. We celebrate mothers because they're the ones who
11 hopefully show each of us how to be compassionate. And we
12 celebrate fathers because fathers show and give role models
13 about how to be strong when you're really weak. And we
14 celebrate fathers because they show us how we can have
15 understanding when you're really confused.

16 Should you consider Jeff Cromartie's life and the
17 Father's Days and the Mother's Days in his life when you
18 decide what kind of punishment you're going to give him? I
19 think you should. I think you should. Thistles come in all
20 forms and fashions. And hard rocks are everywhere.

21 I'm going to sit down now. And I, I want to leave with
22 this one more reference to the scriptures. And it's
23 something we've all grown up with too. In Ecclesiastes,
24 which said, there's a time for everything under the sun.
25 Every purpose under heaven. Now's the time to punish Jeff

1

Cromartie. It's not the time to kill him.

* * * * *

CHARGE OF THE COURT

THE COURT: Members of the jury, the Defendant in this case, Ray Jefferson Cromartie, has been found guilty of the offense of Murder and it now becomes your duty to determine, within the limits of the law, what punishment will be imposed for this offense.

Now, in arriving at this determination you are authorized to consider all of the evidence presented here in court in both stages of this proceeding presented by the State and the Defendant throughout the trial before you, unless the Court has previously instructed you to consider certain evidence introduced by the State for a limited purpose, in which event such evidence shall not be considered by you in determining punishment.

Now, you shall also consider the facts and circumstances, if any, in extenuation, mitigation and aggravation of punishment.

Now, mitigating or extenuating facts and, or circumstances are those which you, the jury, find do not constitute a justification or excuse for the offense in question, but which in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability or blame.

Aggravating circumstances are those which you, the jury, find increase the guilt or enormity of the offense, or

1 add to its injurious consequences.

2 Now, under the laws of this state a person found guilty
3 of Murder shall be punished by death or by life imprisonment
4 without parole or by life imprisonment.

5 Now, under our law a sentence of death or life
6 imprisonment without parole shall not be imposed unless the
7 jury finds beyond a reasonable doubt that at least one or
8 more statutory aggravating circumstance exists, recommends a
9 sentence of death, or a sentence of life imprisonment
10 without parole in its verdict and designates in its verdict
11 in writing the statutory aggravating circumstance or
12 circumstances which it finds from the evidence to exist in
13 this case beyond a reasonable doubt.

14 Now, ladies and gentlemen, under the law of this state
15 the following may constitute statutory aggravating
16 circumstances: First, if the offense of Murder was
17 committed while the Defendant was engaged in the commission
18 of another capital felony.

19 In this connection, I charge you that the offense of
20 Armed Robbery is a capital felony under our law.

21 Second, if you find that the Defendant committed the
22 offense of Murder for himself or another for the purpose of
23 receiving money or any other thing of monetary value.

24 Third, if you find that the offense of Murder was
25 outrageously or wantonly vile, horrible or inhumane in that

1 it involved depravity of mind or an Aggravated Battery to
2 the victim, Richard Slyszy, prior to the death of the victim,
3 Richard Slyszy.

4 Now, the State contends that the offense of Murder in
5 this case was outrageously or wantonly vile, horrible or
6 inhumane in that it involved depravity of mind or Aggravated
7 Battery to the victim.

8 Now, the State has the burden of proving this statutory
9 aggravating circumstance beyond a reasonable doubt. In this
10 regard the State must prove to your satisfaction and beyond
11 a reasonable doubt, first, the offense of Murder was
12 outrageously or wantonly vile, horrible or inhumane, and,
13 second, that it involved at least one of the following:
14 Depravity of mind, or an Aggravated Battery to the victim,
15 Richard Slyszy.

16 Now, an Aggravated Battery occurs when a person
17 maliciously causes bodily harm to another by depriving him
18 of a member of his body, by rendering a member of his body
19 useless, or by seriously disfiguring his body or a member
20 thereof.

21 Now, in order to find that the offense of Murder
22 involved an Aggravated Battery, you must find that the
23 bodily harm to the victim occurred before the victim's
24 death.

25 Now, depravity of mind is a reflection of an utterly

1 corrupt, perverted or immoral state of mind. In determining
2 whether or not the offense of Murder in this case involved
3 depravity of mind on the part of the Defendant, then you may
4 consider the age and physical characteristics of the victim,
5 and you may consider the actions of the Defendant prior to
6 and after the commission of the murder.

7 Now, in order to find that the offense of Murder
8 involved depravity of mind, you must find that the Defendant
9 as the result of his utter corruption, perversion or
10 immorality committed Aggravated Battery upon a living
11 person.

12 Now, you would not be authorized to return a finding of
13 this statutory aggravating circumstance unless you are
14 convinced beyond a reasonable doubt, not only that the
15 murder involved depravity of mind or an Aggravated Battery
16 to the victim, but that the murder was also outrageously or
17 wantonly vile, horrible or inhumane.

18 Now, should you be convinced beyond a reasonable doubt
19 as to the existence of this statutory aggravating
20 circumstance, then your verdict should reflect your finding,
21 if you so find that the murder was outrageously or wantonly
22 vile, horrible or inhumane. Your verdict should also
23 reflect your finding, if you should so find, that the murder
24 involved at least one of the following: Depravity of mind
25 or an Aggravated Battery to the victim. And your verdict

1 should specify which, depravity of mind or an Aggravated
2 Battery to the victim, was involved in the murder.

3 Now, whether or not any one or more of the statutory
4 aggravating circumstances which I have just given you in
5 charge exists beyond a reasonable doubt in this case is a
6 matter solely for you to determine and to deci -- and it is
7 a matter solely for you to determine and to decide from the
8 evidence in this case.

9 Now, ladies and gentlemen, when you retire to begin
10 your deliberations as to the penalty to be imposed in this
11 case, you will be given a written copy of these jury
12 instructions to be used by you in your deliberations.

13 Now, I caution and instruct you, however, that these
14 written instructions are not evidence and they're not to be
15 considered by you as evidence in your deliberations.
16 They're merely and solely given to you for the purpose of
17 aiding you in remembering what these instructions are which
18 the Court has given you in this charge and are sent out with
19 you for that purpose alone.

20 Now, I further charge you that the sentence of death
21 shall not and cannot be imposed unless you find beyond a
22 reasonable doubt that the Defendant either committed the
23 murder himself, he, himself, attempted to kill the victim,
24 or intended that deadly force be used by another to
25 accomplish the criminal enterprise.

1 Now, members of the jury, you may set the penalty to be
2 imposed at life imprisonment. It is not required and it is
3 not necessary that you find any extenuating or mitigating
4 fact or circumstance in order for you to set the penalty,
5 penalty to be imposed at life imprisonment.

6 In other words, whether or not you find any extenuating
7 or mitigating facts and circumstances, you are authorized to
8 fix the penalty in this case at life imprisonment.

9 Further, if you find from the evidence beyond a
10 reasonable doubt the existence in this case of one or more
11 aggravating statutory circumstances as given you in charge
12 by the Court, then you would be authorized to recommend the
13 imposition of a sentence of life imprisonment without parole
14 or a sentence of death, but you would not be required to do
15 so.

16 Now, if you find from the evidence in this case beyond
17 a reasonable doubt the existence of one or more aggravating,
18 statutory aggravating circumstances given you in charge by
19 the Court, you would still be authorized to sentence the
20 Defendant to life imprisonment. You may fix the penalty at
21 life imprisonment if you see fit to do so for whatever
22 reason is satisfactory to you or without any reason.

23 Now, members of the jury, you may return any one of the
24 three verdicts as to penalty in this case: life
25 imprisonment, life imprisonment without parole and death.

1 Now, under our law, life imprisonment means that the
2 Defendant will be sentenced to incarceration for the
3 remainder of his natural life, but will be eligible for
4 parole during the term of such sentence.

5 If you decide to impose a sentence of life imprisonment
6 you would return a verdict which reads: We, the jury, fix
7 the sentence at life imprisonment. If this is your verdict,
8 the Defendant would be sentenced to serve the remainder of
9 his life in the penitentiary.

10 Now, under our law, life imprisonment without parole
11 means that the Defendant shall be incarcerated for the
12 remainder of his natural life and shall not be eligible for
13 parole unless he is subsequently adjudicated to be innocent
14 of the offense for which he was sentenced.

15 If you decide to impose a sentence of life imprisonment
16 without parole, then you would return a verdict which reads:
17 We, the jury, fix the sentence at life imprisonment without
18 parole and we find the following statutory aggravating
19 circumstance or circumstances to exist. And here you would
20 mark on the verdict form such aggravating circumstance or
21 circumstances, if any, which you find from the evidence to
22 exist beyond a reasonable doubt in this case and upon which
23 I have instructed you.

24 Ladies and gentlemen, the third potential or possible
25 verdict is death. And you may return a verdict which reads:

1 We, the jury, fix the sentence at death and we find the
2 following statutory aggravating circumstance or
3 circumstances, to wit: and here you would mark on the
4 verdict form such aggravating circumstance or circumstances,
5 if any, which you find exist beyond a reasonable doubt from
6 the evidence in this case and upon which I have instructed
7 you.

8 Now, if this, this is your verdict, then the Defendant
9 would be sentenced to be put to death in the manner provided
10 by law.

11 Now, members of the jury, I caution and instruct you
12 that anything that the Court said or did in its rulings or
13 otherwise at any time during this case was not intended and
14 should not be considered by you or construed by you as any
15 hint, suggestion or opinion as to what your verdict in this
16 case should be. Whatever penalty is to be imposed within
17 the limits of the law that I have instructed you is a matter
18 solely for you members of the jury to determine. And if I
19 have made any remark or done or failed to do any act which
20 may have caused you to believe that I have any opinion or
21 expressed any opinion, then I instruct you to not consider
22 it and to complete disregard it in deciding your verdict in
23 this case.

24 Now, ladies and gentlemen, whatever your verdict is as
25 to penalty, it must be a unanimous verdict. That is, it

1 must be agreed upon by all of your members. It must be in
2 writing, dated and signed by your foreperson and returned
3 and published into open court.

4 Now, ladies and gentlemen, we have prepared a verdict
5 form for your use in making up your verdict to be returned
6 and published in open court.

7 Now, ladies and gentlemen, one other cautionary
8 instruction at this time. It's approximately 12:00 noon.
9 If at any time you wish to recess for lunch, send us a note
10 to that effect and we will recess for lunch. I will bring
11 you in and give you more cautionary instructions.

12 Ladies and gentlemen, in addition, it has been held in
13 the past that for books, references and other material to be
14 in the jury room, including Bibles, can be cause for
15 reversible error in a particular case. So, let me instruct
16 that if any of you do have any such books, references,
17 Bibles or other materials with you, to leave those with the
18 bailiff while going into the jury room. They will be
19 returned to you at the appropriate time.

20 Ladies and gentlemen, Mr., Ms. Clark, Ms. Sims, Mr.
21 Henry and Mr. Piland, at this time you will again be
22 separated from the first twelve jurors while they are
23 deliberating and the same instructions would apply. If at
24 some point in time it becomes necessary under law to excuse
25 one of these twelve jurors, then you would replace that

1 particular juror in the order that you were originally
2 selected.

3 Ladies and gentlemen, you may now retire to begin your
4 deliberations.

5 (At approximately 12:05 P. M. the jury retires from the
6 courtroom, after which the following transpired)

7 THE COURT: Gentlemen, understanding that the Defense
8 wishes to reserve any objections, is the Defense aware of
9 any slip of the tongue or other such matter in regards to
10 the charge given by the Court?

11 MR. MEARS: No, Your Honor. I know of no slip of the
12 tongue or any inadvertent remarks that were in regard to the
13 charge. Your Honor, we would reserve the right to object
14 and, at the time of a Motion for a New Trial or a notice of
15 appeal.

16 THE COURT: All right.

17 MR. MEARS: Your Honor, there were certain items of
18 evidence entered into, during the sentencing phase. Could I
19 ask that they be taken out?

20 THE COURT: Yes, sir. The exhibits, 21, 19 and 20, I
21 believe, as well as the verdict form and the copy of the
22 charge need to go out to the jury at this time.

23 MR. HARDY: Along with all the other evidence that was
24 introduced.

25 THE COURT: Yes, sir. It can go out also.

1 Mr. Peters, if you could get -- Mr. Stratford. Is Mr.
2 Nicholson around? To help carry all of this to the jury
3 room.

4 Gentlemen, again, at this time we need to address the
5 Unified Appeal Procedure. Specifically, Trial Section B, 3.

6 Gentlemen, let me direct your attention to part 3, C
7 and D of the Checklist for the Unified Appeal. Any issues
8 regarding closing argument or the Court's charge that have
9 not already been addressed?

10 MR. MEARS: We have none, Your Honor.

11 THE COURT: We have already -- Gentlemen, we've already
12 addressed the form of the verdict. Counsel had no
13 objections to the form.

14 Mr. Cromartie, at this time I need to give you an
15 opportunity to state any objections which you may have to
16 your Defense Counsel or to the manner in which Defense
17 Counsel has been conducting your defense. Do you have any
18 objections at this time?

19 MR. CROMARTIE: (Shakes head negatively)

20 THE COURT: Ladies and gentlemen, we'll be in recess --

21 MR. MEARS: Judge, may I present an order to you with
22 regard to the ex parte matter?

23 THE COURT: Yes, sir.

24 We'll be in recess while the jury is deliberating.

25 (Whereupon the Court is recessed to await the verdict

1 of the jury.

2 At approximately 12:20 P. M. the jury returns to the
3 courtroom, after which the following transpired)

4 THE COURT: Ms. Blaha, it's my understanding that the
5 jury would like to go ahead and take their lunch recess; is
6 that correct?

7 MS. BLAHA: Yes, sir.

8 THE COURT: It's about 12:20. Come back at 1:30?
9 Would that be satisfactory with everyone?

10 I'm going to simply ask that you recall all the
11 cautionary instructions that I've previously given you.
12 And, again, it may be a good idea for you not to wear your
13 juror label out to lunch so that no one will give you any
14 unsolicited opinions in regards to what your decision should
15 be in this particular matter.

16 Let me simply ask that you do recall and adhere to all
17 of the cautionary instructions previously given you. If you
18 would, return to your jury by 1:30. Wait till all twelve of
19 you are there and then the bailiff will inform me that all
20 twelve of you are present and I will inform the bailiff to
21 tell you that you may begin your deliberations at that time.

22 Thank you.

23 Everyone remain seated while the jury retires.

24 (Whereupon the jury retires from the courtroom,
25 after which the following transpired)

1 THE COURT: We'll be in recess until 1:30.

2 (Whereupon the Court is recessed for lunch, after
3 which the jury resumes deliberations.

4 At approximately 4:05 P. M. the proceedings are
5 reconvened, with the following transpiring outside
6 of the jury's presence)

7 THE COURT: Gentlemen, we have a question, we have two
8 questions from the jury. The second question is, "May we
9 have a fifteen minute break?" Of course, we will grant
10 that. The first question is, and this is something that we
11 will address. I'm going to go ahead and give them their
12 break and then we'll address it when they come back from
13 their break. That is, "As jurors, we would like to know
14 what happens if we do not come up with a unanimous vote?"
15 And we will address that when they come back from their
16 break.

17 If you would, ask them to -- Gentlemen, do you have any
18 objections to the bailiff simply telling them that they may
19 take a break at this time?

20 MR. MEARS: No, Your Honor; we don't.

21 THE COURT: All right. If you would tell them that
22 they may take a fifteen to twenty minute break at this time
23 and when they come back to the jury room ask them, as we
24 have before, not to begin any deliberations, that we will
25 answer this other question for them before they resume their

1 deliberations.

2 All right. And, and, gentlemen, I'll be asking for the
3 State's and the Defense's position insofar as a response to
4 this question when we come back.

5 MR. MEARS: Your Honor, we'll try to find some law.
6 But if I could just ask the Court -- I'm sure the Court
7 knows this, but there are no Allen charges given in the
8 sentencing phase, and I know the Court knows that --

9 THE COURT: Legare.

10 MR. MEARS: And I would be somewhat concerned that any
11 kind of response that the Court gives may be construed as a
12 form of an Allen charge and I just --

13 THE COURT: I, I don't know that a response is
14 appropriate. I think I've got a case right here that will
15 address that, but while they're on their recess I'll see if
16 I can get that to my finger tips.

17 MR. MEARS: And I'm sure the Court knows that. I'm
18 just alerting the Court, because that's in the Unified
19 Appeal Rule.

20 THE COURT: What --

21 MR. MEARS: About no Allen charge. I know that you
22 know that. I just wanted to make sure that I had brought
23 that to the Court's attention pursuant to the Unified
24 Appeal.

25 THE COURT: All right. Thank you, sir.

1 MR. MEARS: I didn't mean any disrespect to the Court's
2 knowledge in that area, is what I'm saying.

3 THE COURT: That's fine.

4 We'll be in recess for about fifteen minutes.

5 (Whereupon the Court takes a brief recess, and upon
6 reconvening the following transpired outside of the
7 jury's presence)

8 THE COURT: You may bring the jury in.

9 (Whereupon the jury returns to the courtroom,
10 after which the following transpired)

11 THE COURT: Ms. Blaha, we have a note from the jury.
12 The question is, "We, as jurors, would like to know what
13 happens if we are unable to reach a unanimous vote?" Is
14 that correct?

15 MS. BLAHA: Yes, sir.

16 THE COURT: Ms. Blaha, let me inform you and the rest
17 of the jury at this time that I, by law, cannot answer that
18 question for you. And I ask that ya'll return to your jury
19 room to continue your deliberations and try to reach a
20 unanimous verdict in this particular case.

21 Let me also -- This is an opportune time to go ahead
22 and inform you and ask you, that if at some point in time
23 during your deliberations the majority of you feel it would
24 be best to recess for the day and come back tomorrow
25 morning, let me know that. On the other hand, if the

1 majority of you wish to continue deliberating this evening
2 for a period of time, then we will try to accommodate you in
3 that respect. And, of course, taking into consideration
4 whether or not any one or more of you have any, any very
5 pressing matters that need your attention this evening.
6 Okay?

7 MS. BLAHA: Okay.

8 THE COURT: Thank you.

9 Mr. Hutchings.

10 (Whereupon the jury retires from the courtroom,
11 after which the following transpired).

12 THE COURT: We'll be in recess while the jury is
13 deliberating.

14 (Whereupon the Court is recessed to await the verdict
15 of the jury.

16 At approximately 4:55 P. M. the jury returns to the
17 courtroom, after which the following transpired)

18 THE COURT: Madam Foreperson, it's my understanding the
19 jury would like to recess for the evening?

20 MS. BLAHA: Yes, sir.

21 THE COURT: Ladies and gentlemen, will 9:00 A. M.
22 tomorrow morning be satisfactory for us to reconvene?

23 At this time I'm going to again ask you to recall the
24 cautionary instructions that have previously been given you
25 by the Court. I do anticipate there will be matters in the

1 local newspaper, possibly other papers that are circulated
2 in this area regarding this particular matter. In addition,
3 I anticipate there may be matters on some of the local
4 television stations that you do receive in this particular
5 area. So I'm going to ask that you not read any newspapers
6 whatsoever. Do not watch any local news broadcasts
7 whatsoever. In addition, do not allow anyone else to talk
8 with you about the case or read anything to you about the
9 case or discuss it within your presence or within your
10 hearing.

11 Additionally, if you go by the Madison Street Deli or
12 the intersection of Jackson Street and Pinetree Boulevard,
13 again, please keep your attention diverted away from these
14 particular scenes.

15 Any other cautionary instructions requested on behalf
16 of the State?

17 MR. HARDY: No, Your Honor. Thank you.

18 THE COURT: Or the Defense?

19 MR. MEARS: Nothing for the Defense.

20 THE COURT: Ladies and gentlemen, you are excused until
21 9:00 A. M. tomorrow morning. If you would, report back to
22 the jury room tomorrow morning. As soon as the bailiff
23 informs me that all sixteen of you are here, then I will ask
24 you to come into the courtroom. We will address whether or
25 not any of you over the recess either inadvertently or

1 otherwise were exposed to any outside sources concerning
2 this particular matter and then we will resume the
3 deliberations at that time.

4 Thank you.

5 Mr. Sheriff, make sure that hallway is accessible for
6 these jurors so they can get out with no problem.

7 SHERIFF POWELL: Yes, sir.

8 (Thereupon the jury retires from the courtroom,
9 after which the following transpired)

10 THE COURT: Ladies and gentlemen, we'll be in recess
11 until 9:00 A. M. tomorrow morning.

12 (Whereupon the Court is recessed for the day, with
13 the proceedings to be resumed the following A. M.)

14 * * * * *

1 (The twelfth day of proceedings commences at
2 approximately 9:00 A. M. on Tuesday, September
3 the 30th, 1997, in the jury's presence)

4 THE COURT: Good morning, ladies and gentlemen.

5 Ladies and gentlemen, prior to your resuming your
6 deliberations, I do need to inquire as to whether or not
7 between our recess yesterday afternoon and this morning any
8 of you have read or seen anything about this case? Any of
9 you heard anything about this case, either radio, TV, street
10 talk, coffee shop talk, otherwise? Has anyone talked with
11 you about the case or attempted to talk with you about the
12 case? Any of you talked with anyone about this case?

13 All right. Thank you, ladies and gentlemen.

14 Ladies, at this time you may retire to your jury room
15 and resume your deliberations.

16 (Whereupon the jury retires from the courtroom,
17 after which the following transpired)

18 THE COURT: We'll be in recess while the jury is
19 deliberating.

20 Mr. Sheriff -- Let me -- Ladies and gentlemen, I'm
21 going to ask Sheriff Powell, and this is simply for the
22 jurors' convenience and ease, that when we do recess for
23 lunch or for the evening, I'm going to ask before the jurors
24 actually file, file out of the courtroom, to ask anyone
25 that's, that's outside to step inside the courtroom so that,

1 you know, the jurors will feel comfortable and at ease while
2 they're filing out.

3 SHERIFF POWELL: Yes, sir.

4 THE COURT: We'll be in recess while the jury is
5 deliberating.

6 (Whereupon the Court is recessed to await the verdict
7 of the jury.

8 At approximately 11:55 A. M. the jury returns to the
9 courtroom, after which the following transpired)

10 THE COURT: Madam Foreperson, my understanding is that
11 the jury is ready to recess for lunch. Is that correct?

12 MS. BLAHA: (Nods head affirmatively)

13 THE COURT: Okay. Let me ask whether or not you wish
14 to come back at 1:00 or 1:15? 1:00 o'clock? Okay.

15 I'm just going to ask that you recall and abide by all
16 the cautionary instructions that I have previously given
17 you. If ya'll would return to your jury room at 1:00 P. M.
18 The bailiff will inform me when all of you are present and
19 we'll send a message for you to begin your deliberations
20 again.

21 Thank you.

22 Mr. Sheriff, have we got the hallway cleared out there?

23 SHERIFF POWELL: Make sure all the hallways are
24 cleared.

25 (Whereupon the jury retires from the courtroom,

1 after which the following transpired)

2 THE COURT: Ladies and gentlemen, we'll just give them
3 a couple of minutes to disperse and then we'll recess for
4 lunch.

5 (Whereupon there is a brief delay)

6 THE COURT: We'll be in recess until 1:00 P. M.

7 (Whereupon the Court is recessed for lunch after
8 which the jury resumes deliberations.

9 At approximately 4:55 P. M. the proceedings
10 reconvene, with the following transpiring outside
11 of the jury's presence)

12 THE COURT: Mr. Mears, gentlemen, gentlemen, I have
13 just received a note from the jury requesting that we recess
14 for the day.

15 If you would bring the jury in, please, ma'am.

16 (Whereupon the jury returns to the courtroom,
17 after which the following transpired)

18 THE COURT: Good afternoon.

19 Ladies and gentlemen, I understand that you wish to
20 recess for the evening. Is that correct?

21 We will at this time recess. I'm going to ask that you
22 report back to the jury room by 9:00 A. M. tomorrow morning.
23 Once all of us are here, then I will ask that you step in
24 the courtroom so that I can again address whether or not any
25 of you have been exposed to anything outside of this

1 courtroom in any manner whatsoever.

2 I am going to ask that you recall all of the cautionary
3 instructions that I have previously given you and please
4 abide by those cautionary instructions.

5 Does anyone feel like that I need to go through those
6 again, or do you feel like you know them pretty well at this
7 time?

8 Okay. Madam Foreperson, let me ask whether or not the
9 jury is making some progress, whether or not the jury has
10 made some progress throughout their deliberations?

11 MS. BLAHA: Yes, sir; we have made some progress.

12 THE COURT: Okay. And do you feel like that given
13 continued opportunity to deliberate that you'd have an
14 opportunity to make some more progress?

15 MS. BLAHA: Yes, sir.

16 THE COURT: Okay. All right. Ladies and gentlemen, at
17 this time we will recess until 9:00 A. M. tomorrow morning.

18 Everyone remain seated while the jury retires, please.

19 (Whereupon the jury retires from the courtroom,
20 after which the following transpired)

21 THE COURT: Mr. Hutchings, put these notes in the file,
22 please, sir.

23 Ladies and gentlemen, we're just going to wait a couple
24 of moments to give the jurors an opportunity to disperse.

25 (Whereupon there is a brief delay)

1 THE COURT: We'll be in recess until 9:00 o'clock
2 tomorrow morning.

3 (Thereupon the Court is recessed for the day, with
4 the proceedings to be resumed the following A. M.)

5 * * * * *

1 (The thirteenth day of proceedings commences at
2 approximately 9:00 A. M. on Wednesday, October the
3 1st, 1997, outside of the jury's presence)

4 THE COURT: Gentlemen, it's my understanding that all
5 of the jurors are here. What I would anticipate doing is
6 bringing them in at this time and simply inquiring as to
7 whether or not anyone has been exposed to anything outside
8 of the courtroom and then ask them to resume their
9 deliberations.

10 You may bring the jury in.

11 (Whereupon the jury returns to the courtroom,
12 after which the following transpired)

13 THE COURT: Good morning, ladies and gentlemen.

14 Ladies and gentlemen, before you resume your
15 deliberations, I need to inquire at this time, ask whether
16 or not since our recess yesterday evening whether or not any
17 of you have been exposed to any sources of information
18 outside of this courtroom that might influence your
19 decision? Of course, that means in regards to the facts of
20 the case or any exposure from outside sources in regards to
21 what would be an appropriate sentence in this case.

22 At this time let me ask whether or not any of you have
23 read anything about this particular matter since we recessed
24 yesterday afternoon? Whether or not any of you have heard
25 anything about this particular matter since we have recessed

1 yesterday afternoon? Have any of you talked with anyone
2 about this matter since we recessed yesterday afternoon,
3 including discussions with each other outside of the
4 presence of other jurors deliberating on the case? Has
5 anyone tried to talk with you about this particular matter
6 in any regards whatsoever?

7 Okay. Ms. Fletcher, what I will do in a moment, I
8 don't want to address that with you in front of the other
9 jurors. Whatever information that you give me does not need
10 to be shared with the other jurors in regards to that
11 particular matter.

12 Anyone else? Has anyone tried to talk with you and
13 told you not to tell me that they've tried to talk with you
14 about this particular matter? Okay.

15 All right. Ladies and gentlemen, at this time let me
16 excuse the initial twelve jurors to your jury room at this
17 time. Please don't start your deliberations until we send
18 you word to begin your deliberations. Let me also excuse
19 the alternates at this time to your room. Thank you.

20 Ms. Fletcher, if you would stay for just a moment,
21 please, ma'am.

22 (Whereupon the jury retires from the courtroom,
23 after which the following transpired)

24 THE COURT: Ms. Fletcher, I believe you indicated to me
25 that someone has tried to talk with you about this

1 particular matter. Is that correct?

2 MS. FLETCHER: I have to assume that's what they --
3 When I drove through the restaurant place yesterday and they
4 handed my drink, the young lady said to me, "The person that
5 done that was my cousin." And I just took my drink and
6 drove off. But I didn't want to not mention it. I mean, I
7 just --

8 THE COURT: Sure.

9 MS. FLETCHER: -- assumed that's what I had to do.

10 THE COURT: Well, I appreciate your, your candidness
11 with us.

12 Do you think that they knew you were a juror? Did you
13 have your juror label on, or do you think they may have
14 seen --

15 MS. FLETCHER: I didn't have it on yesterday. Now, I
16 have had it on, like, last week one day during lunch. I
17 just drove through the window and picked up a sandwich.

18 THE COURT: Okay. That was the only statement made?

19 MS. FLETCHER: That was the only statement.

20 THE COURT: Did you make any response to that
21 statement?

22 MS. FLETCHER: Oh, no. I drove off.

23 THE COURT: Okay. Would that statement in any, in any
24 way affect your decision in this particular matter?

25 MS. FLETCHER: No, sir.

1 THE COURT: One way or the other?

2 MS. FLETCHER: (Shakes head negatively)

3 THE COURT: Okay. Does either party wish to inquire of
4 Ms. Fletcher in regards to that particular matter? Did
5 ya'll, were ya'll able to hear what she said?

6 MR. MEARS: I, I don't have any questions. I mean, Ms.
7 Fletcher has answered the Court's questions. I'm satisfied
8 that she will continue appropriately.

9 THE COURT: All right. Thank you, ma'am.

10 (Whereupon Ms. Fletcher retires from the courtroom)

11 THE COURT: Ms. Peters, if you would tell the jury they
12 may begin their deliberations.

13 Gentlemen, we have a, a card from Ms. Jeanette Sims.
14 Ms. Sims is our third alternate juror. It's in the form of
15 a reminder from a doctor's office that she has an
16 appointment at 2:15 this afternoon. I would anticipate
17 excusing her to go to the appointment and then to return. I
18 don't see at this point in time how that might delay our
19 proceedings whatsoever in this matter.

20 Is that satisfactory with Counsel?

21 MR. MEARS: That's fine with us, Judge.

22 THE COURT: Okay. If you would ask Ms. Peters to ask
23 the alternate, Jeanette Sims, to step in, please.

24 (Whereupon Ms. Sims enters the courtroom)

25 THE COURT: Good morning, Ms. Sims.

1 MS. SIMS: Good morning.

2 THE COURT: I understand you have an appointment with
3 Dr. Bridges at 2:15 today.

4 MS. SIMS: Yes.

5 THE COURT: Okay. We can accommodate you so that you
6 can make that appointment. What we will do is probably,
7 when we break for lunch we'll probably excuse you at that
8 time and ask you, ask you to report back after your doctor's
9 appointment is concluded. And if for some reason you're not
10 through with your doctor's appointment by 5:00 P. M., then I
11 would think you could return home at that time. And I
12 simply ask that you recall all of the cautionary
13 instructions that we've given you and abide by those
14 instructions and return tomorrow morning at 9:00 A. M. if
15 the jury is still deliberating on this matter.

16 MS. SIMS: All right. Okay. Thank you.

17 THE COURT: Yes, ma'am. Do you need your card back?

18 MS. SIMS: No. I have another one in here.

19 THE COURT: Okay. Thank you, ma'am.

20 MS. SIMS: Thank you.

21 (Whereupon Ms. Sims retires from the courtroom)

22 THE COURT: Mr. Hutchings, you can put that in the
23 file, please, sir.

24 We'll be in recess while the jury is deliberating.

25 (Whereupon the Court is recessed to await the verdict

1 of the jury.

2 At approximately 9:55 A. M. the Court reconvenes with
3 the following transpiring outside of the presence of
4 the jury)

5 THE COURT: Ladies and gentlemen, we have a note from
6 the jury. "We, the jurors, have come to a decision". It
7 appears that we have a verdict.

8 Is there anything that we need to address prior to
9 bringing the jury in and receiving the verdict?

10 MR. MEARS: No, sir.

11 THE COURT: Ms. Peters, if you would bring the jury in,
12 please, ma'am.

13 (Whereupon the jury returns to the courtroom,
14 after which the following transpired)

15 THE COURT: Madam Foreperson, it's my understanding
16 that the jury has reached a decision? Has the jury reached
17 a unanimous verdict in regards to an appropriate sentence in
18 this particular case?

19 MS. BLAHA: Yes, sir.

20 THE COURT: If you would hand the verdict form to the
21 bailiff, please, ma'am?

22 Thank you, ma'am.

23 All right. Ladies and gentlemen, let me inform
24 everyone in the courtroom, I'm going to announce the verdict
25 in just a moment. If you feel that you will be unable to

1 control your emotions, conduct or demeanor, then let me give
2 you an opportunity to excuse yourself at this time. I will
3 not tolerate any outbursts, emotional or otherwise.

4 All right. The verdict of the jury is: We, the Jury,
5 find beyond a reasonable doubt that statutory aggravating
6 circumstances do exist in this case. The statutory
7 aggravating circumstances found to exist are: The offense
8 of Murder was committed while the Defendant was engaged in
9 the commission of another capital felony, to wit: Armed
10 Robbery. The Defendant committed the offense of Murder for
11 himself or another for the purpose of receiving money or any
12 other thing of monetary value. The offense of Murder was
13 outrageously or wantonly vile, horrible or inhumane in that
14 it involved depravity of mind or it involved an Aggravated
15 Battery to the victim prior to the death of the victim.
16 October the 1st, 1997. Patricia Blaha, Foreperson.

17 As to the sentence: We, the Jury, fix the sentence at
18 death. October the 1st, 1997. Patricia Blaha, Foreperson.

19 All right, ladies and gentlemen, at this time I'm going
20 to poll the jury as I did when I received the verdict at the
21 guilt-innocence phase of this particular trial.

22 I will ask individually whether or not this was your
23 verdict in the jury room. Whether or not it was made by
24 you --

25 (Whereupon there is a brief interruption in the

1 courtroom)

2 THE COURT: Ladies and gentlemen, let me ask you to
3 step to your jury room for just a moment.

4 (Whereupon the jury retires from the courtroom,
5 after the following transpired)

6 THE COURT: Mr. Sheriff, I assume Mr. Hadley will
7 determine if she needs some medical assistance and call
8 assistance if necessary.

9 SHERIFF POWELL: Yes, sir.

10 THE COURT: If you'd ask the jury to step back in,
11 please, ma'am.

12 (Whereupon the jury returns to the courtroom,
13 after which the following transpired)

14 THE COURT: Ladies and gentlemen, as I was saying, I
15 will ask each of you individually, if this was your verdict
16 in the jury room? Was it reached by you freely and
17 voluntarily? Is it still your verdict? And, was it based
18 it solely upon the evidence presented here in this courtroom
19 and the instructions of the law as given you by the Court?

20 Ms. Rhonda Smith. Ms. Smith, was this your verdict in
21 the jury room?

22 MS. SMITH: Yes, sir.

23 THE COURT: Was it reached by you freely and
24 voluntarily?

25 MS. SMITH: Yes, sir.

1 THE COURT: Is it still your verdict?

2 MS. SMITH: Yes, sir.

3 THE COURT: And was it based solely on the evidence
4 presented in this courtroom?

5 MS. SMITH: Yes, sir.

6 THE COURT: And on the instructions of the law as given
7 you by the Court?

8 MS. SMITH: Yes, sir.

9 THE COURT: Ms. Marsha Conradi.

10 MS. CONRADI: Yes, sir.

11 THE COURT: Ms. Conradi, was this your verdict in the
12 jury room?

13 MS. CONRADI: Yes, sir; it was.

14 THE COURT: Was it reached by you freely and
15 voluntarily?

16 MS. CONRADI: Yes, sir.

17 THE COURT: Is it still your verdict?

18 MS. CONRADI: Yes, sir; it is.

19 THE COURT: And was it based solely upon the evidence
20 presented here in this courtroom and the instructions of the
21 law given you by the Court?

22 MS. CONRADI: Yes, sir.

23 THE COURT: Ms. Theresa Fletcher. Ms. Fletcher, was
24 this your verdict in the jury room?

25 MS. FLETCHER: Yes, sir.

1 THE COURT: Was it reached by you freely and
2 voluntarily?

3 MS. FLETCHER: Yes, sir.

4 THE COURT: Is it still your verdict?

5 MS. FLETCHER: Yes, sir.

6 THE COURT: And was it based solely upon the evidence
7 presented in this courtroom and the instructions of the law
8 given you by the Court?

9 MS. FLETCHER: Yes, sir.

10 THE COURT: Ms. Corine Monroe.

11 MS. MONROE: Yes, sir.

12 THE COURT: Ms. Monroe, was this your verdict in the
13 jury room?

14 MS. MONROE: Yes, sir.

15 THE COURT: Was it reached by you freely and
16 voluntarily?

17 MS. MONROE: Yes, sir.

18 THE COURT: Is it still your verdict?

19 MS. MONROE: Yes, sir.

20 THE COURT: And was it based solely upon the evidence
21 presented here in this courtroom and the instructions of the
22 law given you by the Court?

23 MS. MONROE: Yes, sir.

24 THE COURT: Ms. Darla Glass.

25 MS. GLASS: Yes.

1 THE COURT: Ms. Glass, was this your verdict in the
2 jury room?

3 MS. GLASS: Yes, sir.

4 THE COURT: Was it reached by you freely and
5 voluntarily?

6 MS. GLASS: Yes, sir.

7 THE COURT: Is it still your verdict?

8 MS. GLASS: Yes, sir.

9 THE COURT: And was it based solely upon the evidence
10 presented here in this courtroom and the instructions of the
11 law as given you by the Court?

12 MS. GLASS: Yes, sir.

13 THE COURT: Ms. Jewell McMickle.

14 MS. MCMICKLE: Yes.

15 THE COURT: Ms. McMickle, was this your verdict in the
16 jury room?

17 MS. MCMICKLE: Yes.

18 THE COURT: And was it reached by you freely and
19 voluntarily?

20 MS. MCMICKLE: Yes.

21 THE COURT: Is it your still your verdict?

22 MS. MCMICKLE: Yes.

23 THE COURT: And was it based solely upon the evidence
24 presented here in this courtroom and the instructions of the
25 law given you by the Court?

1 MS. MCMICKLE: Yes.

2 THE COURT: Ms. Patricia Blaha. Ms. Blaha, was this
3 your verdict in the jury room?

4 MS. BLAHA: Yes, sir.

5 THE COURT: Was it reached by you freely and
6 voluntarily?

7 MS. BLAHA: Yes, sir.

8 THE COURT: Is it still your verdict?

9 MS. BLAHA: Yes, sir.

10 THE COURT: And was it based solely upon the evidence
11 presented here in this courtroom and the instructions of the
12 law given you by the Court?

13 MS. BLAHA: Yes, sir.

14 THE COURT: Ms. Charlotte Parker.

15 MS. PARKER: Yes, sir.

16 THE COURT: Ms. Parker, was this your verdict in the
17 jury room?

18 MS. PARKER: Yes, sir.

19 THE COURT: Was it reached by you freely and
20 voluntarily?

21 MS. PARKER: Yes, sir.

22 THE COURT: Is it still your verdict?

23 MS. PARKER: Yes, sir.

24 THE COURT: And was it based solely upon the evidence
25 presented here in this courtroom --

1 MS. PARKER: Yes, sir.

2 THE COURT: -- and the instructions of the law given
3 you by the Court?

4 MS. PARKER: Yes, sir.

5 THE COURT: Ms. Amy Alderson. Ms. Alderson, was this
6 your verdict in the jury room?

7 MS. ALDERSON: Yes, sir.

8 THE COURT: Was it reached by you freely and
9 voluntarily?

10 MS. ALDERSON: Yes, sir.

11 THE COURT: Is it still your verdict?

12 MS. ALDERSON: Yes, sir.

13 THE COURT: And was it based solely upon the evidence
14 presented here in this courtroom?

15 MS. ALDERSON: Yes, sir.

16 THE COURT: And the instructions of the law given you
17 by the Court?

18 MS. ALDERSON: Yes, sir.

19 THE COURT: Ms. Natasha Hill. Ms. Hill, was this your
20 verdict in the jury room?

21 MS. HILL: Yes, sir.

22 THE COURT: Was it reached by you freely and
23 voluntarily?

24 MS. HILL: Yes, sir.

25 THE COURT: Is it still your verdict?

1 MS. HILL: Yes, sir.

2 THE COURT: And was it based solely upon the evidence
3 presented here in this courtroom and the instructions of the
4 law given you by the Court?

5 MS. HILL: Yes, sir.

6 THE COURT: Ms. Gladys Leaks.

7 MS. LEAKS: Yes, sir.

8 THE COURT: Ms. Leaks, was this your verdict in the
9 jury room?

10 MS. LEAKS: Yes, sir.

11 THE COURT: Was it reached by you freely and
12 voluntarily?

13 MS. LEAKS: Yes, sir.

14 THE COURT: Is it still your verdict?

15 MS. LEAKS: Yes, sir.

16 THE COURT: And was it based solely upon the evidence
17 presented in this courtroom and the legal instructions given
18 you by the Court?

19 MS. LEAKS: Yes, sir.

20 THE COURT: Ms. Annette Connelly. Ms. Connelly, was
21 this your verdict in the jury room?

22 MS. CONNELLY: Yes, sir.

23 THE COURT: Was it reached by you freely and
24 voluntarily?

25 MS. CONNELLY: Yes, sir.

1 THE COURT: Is it still your verdict?

2 MS. CONNELLY: Yes, sir.

3 THE COURT: And was it based solely upon the evidence
4 presented in this courtroom and the legal instructions given
5 you by the Court?

6 MS. CONNELLY: Yes, sir.

7 THE COURT: Gentlemen, does either party wish to
8 examine the verdict form?

9 MR. MEARS: I do, Your Honor.

10 THE COURT: Gentlemen, are there any matters that need
11 to be taken up prior to dismissing this jury?

12 MR. HARDY: No, Your Honor. Thank you.

13 THE COURT: On behalf of the Defense?

14 MR. MEARS: I can think of nothing at this time, Your
15 Honor.

16 THE COURT: Mr. Sheriff, in a moment I'm going to
17 dismiss this jury. I'm going to ask everyone to remain in
18 the courtroom for a minimum of five minutes to give this
19 jury an opportunity to disperse.

20 If you would, please check and see if there is anyone
21 in the hallway. And if we need a few moments to give your
22 deputies an opportunity to remove them to some other area,
23 we will do so. In addition, if you would also have your
24 personal, personnel check the hallways downstairs and the
25 steps and areas outside to make sure this jury may disperse

1 without any interference or contact whatsoever.

2 (Whereupon there is a brief delay)

3 THE COURT: Ladies and gentlemen, I want to thank you
4 for your patience with the Court throughout this particular
5 trial. I know that jury service takes away from your
6 business lives, it takes away from your personal lives and
7 it is indeed a community service that you perform, very
8 difficult community service that you perform.

9 Let me tell you at this time that occasionally when
10 persons have served on a particular jury, someone may
11 contact them to discuss their findings, how they came to
12 their findings. Attorneys may contact a juror to, to get
13 advice on, on how they might perform differently in the
14 future or something of that nature. It's not uncommon.
15 Whether or not you wish to talk with anyone about this
16 particular matter is a decision for you to make. You are
17 under no obligation whatsoever to talk with anyone about
18 your service on this jury. If anyone attempts to talk with
19 you about your service on this jury and you do not desire to
20 talk with them and they persist, then let me know and I will
21 take steps to resolve that. On the other hand, as I have
22 said, if you do wish to discuss it, then you are at liberty
23 to do so.

24 Ladies and gentlemen, with that in mind we are going to
25 ask everyone in the courtroom to remain for a minimum of

1 five minutes, and I feel that, that you will be able to
2 disperse at this time without any inconvenience.

3 So, at this time you are dismissed.

4 (Whereupon the jury retires from the courtroom,
5 after which the following transpired)

6 MR. MEARS: Your Honor, we would ask that all the
7 jurors' notes be taken and placed under seal and made a part
8 of this record. All the jurors' notes. And we would ask
9 that the Court have the bailiffs to put all of the notes
10 that were taken and place them under seal and make them a
11 part of the record.

12 THE COURT: All right, sir. Do you have any authority
13 for that, Mr. Mears?

14 MR. MEARS: No, Your Honor. I have no authority for
15 that other than when you had told the jurors that they were
16 to use the notes for themselves, not to share them with
17 anyone else, that the notes -- they were not to take them
18 with them each day. We feel that it would be appropriate
19 under the circumstances for the Court to at least take the
20 notes and place them under seal. That will be an appellate
21 issue at some later time, whether or not they should have
22 been made a part of the record or whether or not the Defense
23 should have access to those notes. I would ask until that
24 issue has been resolved by some appellate court that they be
25 made a part of the record because if some appellate court

1 later were to find that we were entitled to have access to
2 those, to determine whether or not there had been any
3 misconduct amongst the jurors, whether anybody had any --
4 had not decided the case solely based upon what is here in
5 the court, what evidence was presented to them, then unless
6 the notes themselves are a part of the record, there would
7 be no way to determine whether or not such actions had been
8 taken by the jurors or such conduct had been performed by
9 the jurors. So as a prophylactic measure with regard to
10 that possible avenue of appeal on that particular issue, if
11 the notes are gone, if they're no longer available, should a
12 court rule in our favor with regard to access to the notes,
13 it becomes moot because the notes aren't there. So I would
14 ask the Court to at least, at this stage, have the notes
15 placed under seal and made a part of the record. And not to
16 be opened or seen by anyone until such time as Your Honor
17 orders it or an appellate court orders it. I would ask that
18 that be done.

19 THE COURT: Any response?

20 MR. MITCHELL: No, sir. We'll submit it.

21 THE COURT: Mr. Mears, at this point in time I believe
22 that the jury has dispersed -- Did the jurors --

23 BAILIFF: They just started down.

24 THE COURT: Okay. Have they taken their notes with
25 them?

1 BAILIFF: Yes, sir.

2 THE COURT: Mr. Mears, based upon my understanding of
3 the law at this time, I don't feel that it's appropriate for
4 us to secure those notes and place them under seal. I think
5 that throughout the course of this trial the jurors have
6 been questioned thoroughly each and every day in regards to
7 whether or not they have been exposed to any outside sources
8 that might affect their decision. I just -- I don't see how
9 anything in the notes that they have taken while here in
10 this courtroom are going to reflect anything to the contrary
11 than what we have already discovered at this time.

12 MR. MEARS: I understand the Court's ruling.

13 THE COURT: All right, sir.

14 Ladies and gentlemen, are we ready to enter into the
15 sentencing phase of this matter, or would anyone want a
16 brief recess before we do so?

17 MR. MEARS: Could we have a brief recess, Your Honor?

18 THE COURT: All right, sir. How much time, Mr. Mears?

19 MR. MEARS: If we could have fifteen minutes. Mr.
20 Kleinrock will address the Court with regard to specific
21 issues on the possible merger of two of the counts. The
22 Court had asked us to look at that and to make any record we
23 needed to make. Mr. Kleinrock has a couple of cases I want
24 to ask him to cite to the Court with regard to the
25 possibility of the merger of the Aggravated Assault and

1 Aggravated Battery issue. And other than that we'll proceed
2 with the, be prepared to proceed. As I told the Court
3 earlier, I have a motion requesting that -- Excuse me.

4 (Whereupon there is a brief delay)

5 MR. MEARS: Judge, could we take a recess and I'll
6 address the Court on this other issue? Could we take a
7 brief recess? I need to talk with my client outside the
8 presence of the Court.

9 THE COURT: All right, sir. We'll take about a ten
10 minute recess.

11 Mr. Mears, would it be possible for me to review the
12 cases that Mr. Kleinrock has for the Court's review --

13 MR. MEARS: Yes, Your Honor.

14 THE COURT: -- during this recess?

15 MR. MEARS: Yes, sir.

16 THE COURT: We'll be in recess for about ten minutes.

17 (Whereupon the Court takes a brief recess, after
18 which the following transpired)

19 THE COURT: Gentlemen, is it the Court's understanding
20 that the Defense had a motion for the Court to consider in
21 regards to count one, Aggravated Assault, count two,
22 Possession of a Firearm in regards to that Aggravated
23 Assault? Is it the Defense's position that those
24 convictions merge into count three, Aggravated Battery and
25 count four, Possession of a Firearm During the Commission of

1 a Felony. Is that correct?

2 MR. KLEINROCK: Yes, Your Honor; that's correct.

3 THE COURT: Gentlemen, it's my understanding that the
4 State acknowledges that particular position; is that
5 correct?

6 MR. HARDY: Yes, sir.

7 THE COURT: All right, sir. The State has no argument
8 against that position of the Defense?

9 MR. HARDY: No, sir.

10 THE COURT: Gentlemen, is there anything further to
11 consider at this time prior to imposition of the sentence?

12 MR. MEARS: Your Honor, Mr. Cromartie has asked me to
13 address the Court on his behalf and he's asked me to relate
14 to the Court his desire to waive his presence in any further
15 proceedings this morning here in the courtroom. I have
16 indicated to Mr. Cromartie, as has Mr. Bryant, that we do
17 not have the authority to waive his presence for his behalf.
18 That's something he would have to address directly to the
19 Court if he wished to pursue that. I think he wants to
20 address the Court at this time.

21 THE COURT: Mr. Cromartie, sir, at this time I am going
22 to ask that you remain in the courtroom as the Court imposes
23 the sentence. You may remain seated at the table with your
24 Counsel if you wish to do so.

25 Anything else at this time, gentlemen?

1 MR. MEARS: No, sir, Your Honor.

2 THE COURT: Ray Jefferson Cromartie, the jury having
3 found you guilty of count five, the offense of Murder, and
4 the jury having recommended that a sentence of death be
5 imposed, it is considered ordered and adjudged that within
6 the period of time commencing at noon on the 12th day of
7 November, 1997, and ending at noon on the 19th day of
8 November, 1997, that you shall be put to death by the
9 Department of Corrections in the manner provided by law at
10 such penal institution and on such date and at such time
11 within the aforementioned time period as may be designated
12 by the Department of Corrections, all in accordance with the
13 laws of the state of Georgia.

14 It's the sentence of the Court as to count six,
15 Possession of a Firearm During the Commission of a Felony,
16 specifically count five, that you serve a period of five
17 years in the state penal system. That five years is to be
18 served consecutive to count five.

19 It's the sentence of the Court for the offense of
20 Aggravated Battery, count three, that you serve a period of
21 twenty years in the state penal system. That time period is
22 to be served consecutive to count six.

23 It's the sentence of the Court as to count four,
24 Possession of a Firearm During the Commission of a Felony,
25 specifically count three, Aggravated Battery, that you serve

1 a period of five years in the state penal system. This five
2 years is to be served consecutive to the sentence imposed in
3 count three.

4 It's the sentence of the Court for the offense of Armed
5 Robbery, count seven, that you serve the remainder of your
6 natural life in the state penal system. The sentence as to
7 count seven is to be served consecutive to the sentence in
8 count four.

9 It's the sentence of the Court as to count eight,
10 Possession of a Firearm During the Commission of a Felony,
11 specifically count seven, the Armed Robbery, that you serve
12 a period of five years in the state penal system. That five
13 years is to be served consecutive to count seven.

14 Mr. Cromartie, the Unified Appeal Procedure provides
15 for an automatic appeal in this particular matter to the
16 Georgia Supreme Court.

17 You have a right to appeal the conviction and sentence
18 in any and all of these counts which you are convicted and
19 sentenced of today.

20 In addition, you would have a right to petition the
21 Georgia Sentence Review Board for application for reduction
22 of sentence as to all of the sentences with the exception of
23 count five.

24 Now, any notice of appeal, whether as to conviction,
25 sentence, sentence review, must be filed within thirty days

1 of this date; otherwise you will have waived your right to
2 any appellate process in this matter.

3 Mr. Mears and Mr. Bryant would continue to represent
4 you in any appellate process.

5 Good luck to you.

6 MR. MEARS: Your Honor, at this time with the Court's
7 permission, we are filing a Motion for Stay of Execution. I
8 have attached a proposed order to that motion asking that
9 this Court enter an order staying the oral order and the
10 subsequent written order which will be entered in this case.
11 We would ask the Court to stay the execution as it's
12 currently set until such time as the transcript of the trial
13 proceedings have been concluded and a Motion for a New Trial
14 has been filed in this particular case occurred. We would
15 ask the Court to consider entering that order today. I have
16 the original and am filing it with Mr. Hutchings today. And
17 there is a proposed order. I've shared this with Mr. Hardy.
18 I don't believe he has any objection to the form of the
19 order. And I would ask the Court to enter such an order
20 today subsequent to the filing of the written order based
21 upon the Court's oral order here today.

22 THE COURT: All right, sir. Mr. Mears, I'll take that
23 matter under consideration.

24 Mr. Hutchings, if such an order is entered, you need to
25 copy it to Counsel as soon as you receive it.

1 MR. MEARS: Thank you, Your Honor.

2 THE COURT: And have it filed.

3 Mr. Hutchings, let me provide you with the verdict
4 form, please, sir.

5 Ladies and gentlemen, are there any other matters that
6 needed to be addressed at this time prior to recessing and
7 adjourning?

8 MR. MEARS: Just one moment, Your Honor.

9 MR. HARDY: No, sir.

10 MR. MEARS: Your Honor, we can think of nothing else
11 that we need to present to the Court at this time.

12 THE COURT: All right. Court is adjourned.

13 (Thereupon the proceedings are concluded)

C E R T I F I C A T E

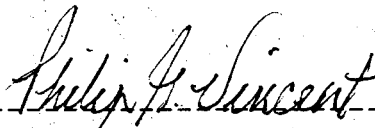
STATE OF GEORGIA

COUNTY OF LOWNDES

I hereby certify that the foregoing proceedings were taken down by me, as stated in the caption, and that the foregoing pages 2818 through 3043 represent a true, correct, and complete transcript of said proceedings.

I further certify that I am neither of kin nor counsel to the parties in this matter, nor am I financially interested in same.

This the 17th day of November, 1997.



PHILIP G. VINCENT, C.C.R.
CERTIFICATE NO: A238
OFFICIAL COURT REPORTER
SOUTHERN JUDICIAL CIRCUIT